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TITLE 6—AGRICULTURAL CREDIT**Chapter III—Farmers Home Administration, Department of Agriculture****Subchapter B—Farm Ownership Loans****PART 311—BASIC REGULATIONS****SUBPART B—LOAN LIMITATIONS****AVERAGE VALUES OF FARMS AND INVESTMENT LIMITS; VERMONT**

For the purposes of Title I of the Bankhead-Jones Farm Tenant Act, as amended, the average value of efficient family-type farm-management units and the investment limit for the county identified below are determined to be as herein set forth; and § 311.30, Chapter III, Title 6 of the Code of Federal Regulations (13 F. R. 9381), is amended by adding said county, average value, and investment limit to the tabulations appearing in said section under the State of Vermont.

VERMONT

County	Average value	Investment limit
Grand Isle.....	\$11,800	\$11,800

(Sec. 41, 60 Stat. 1066; 7 U. S. C. 1015. Interprets or applies secs. 3, 44, 60 Stat. 1074, 1069; 7 U. S. C. 1003, 1018)

Issued this 2d day of May, 1951.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-5258; Filed, May 4, 1951;
8:58 a. m.]

Subchapter F—Miscellaneous Regulations**PART 381—DISASTER LOAN PROGRAM****MAKING AND SERVICING OF DISASTER LOANS**

Part 381 in Title 6, Code of Federal Regulations (14 F. R. 4895, 15 F. R. 2053, 5547), is revised to read as follows: To (1) empower the Administrator to designate areas in which disaster loans may be made as a result of a subsequent disaster occurring in an area previously designated by the Secretary; (2) authorize subsequent loans to disaster loan bor-

rowers; (3) authorize additional loans to applicants in designated areas who have paid their previous disaster loans, provided the need for additional assistance is related directly to the disaster; (4) change terms for repayment of loans; and (5) change security requirements and servicing.

SUBPART A—LOANS UNDER SECTION 2, PUBLIC LAW 38, 81ST CONGRESS**Sec.**

- 381.1 General.
- 381.2 Purpose and scope of program.
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- 381.21 General.
- 381.22 Loan servicing procedures.

AUTHORITY: §§ 381.1 to 381.22 issued under R. S. 161; 5 U. S. C. 22.

DERIVATION: §§ 381.1 to 381.11 contained in FHA Instruction 445.1.

SUBPART A—LOANS UNDER SECTION 2, PUBLIC LAW 38, 81ST CONGRESS

§ 381.1 **General.** Public Law 38, enacted by the 81st Congress, authorized the making of disaster loans in areas designated by the Secretary of Agriculture in which production disasters have occurred. Sections 381.2 to 381.11 provide the policies and procedures for making and servicing such loans.

§ 381.2 **Purpose and scope of program.** The primary purpose of the disaster loan program is the extension of credit to farmers and stockmen, in designated areas, who have suffered substantial damage as a result of a production disaster and who are unable to obtain from commercial banks, cooperative lending agencies, or other responsible sources the credit required to carry on their farming or livestock operations. The Disaster loan program is not designed to enable farmers and stockmen

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to reorganize their farming or stock-raising operations and, therefore, Disaster loans will not be made for that purpose. In connection with some Disaster loans involving the repair or replacement of buildings, other real estate improvements, and orchard and other specialized operations, technical assistance may be required in order to make sound loans and to insure the wise use of funds advanced. In such cases applicants will utilize the services provided by Federal and state agencies and, when feasible, the services of qualified persons or firms, in obtaining needed technical assistance. The Farmers Home Administration will assist applicants in obtaining such services from other sources, and may provide minimum technical services available within its organization to applicants whenever personnel is available.

§ 381.3 Designation of disaster areas. Disaster loans will be made only in those areas designated by the Secretary of Agriculture. A disaster area may consist of a State or county or any combination of States, counties, or subdivisions thereof in which a disaster has reduced substantially agricultural production and created a need for emergency credit not otherwise available. When a subsequent disaster occurs within a previously designated area and the period during which original applications for loans may be accepted in the area has not expired and it will not be necessary to extend that period because of the later disaster, the Administrator may authorize the making of Disaster loans in connection with the later disaster upon a finding that the need for agricultural credit continues to exist, or has increased, by reason of the subsequent disaster.

§ 381.4 Eligibility and certifications. Any farm owner, farm operator, or stockman (including a partnership or corporation engaged primarily in farming or stock-raising operations) who has suffered substantial damage as a result of a production disaster is eligible to receive a Disaster loan, provided he is unable to obtain from commercial banks, cooperative lending agencies or other responsible sources the credit necessary for continuing his farming operations. Before a loan is made, the County Committee and loan approving official will

RULES AND REGULATIONS

determine from the facts in the case that the applicant (1) has suffered production losses substantially greater than those which may be expected from normal fluctuations in yields or (2) if in a storm damaged area, has suffered losses in property which will reduce substantially future production on the farm.

(a) *Subsequent loans.* A subsequent loan to an applicant already indebted for a Disaster loan may be made when necessary to protect the Government's investment in Disaster loans previously made, provided there is reasonable assurance that the subsequent loan and the outstanding balances on the previous loans will be repaid.

(b) *Loans to paid-up borrowers.* Additional loans may be made to applicants in designated areas who have repaid their previous Disaster loans, provided the need for additional assistance is related directly to the disaster and such applicants are unable to obtain from commercial banks, cooperative lending agencies, or other responsible sources the credit necessary to continue their farming operations.

(c) *Certification by applicant.* Before a Disaster loan may be made the applicant must certify on Form FHA-202, "Application and Certifications for Disaster Loan," that he has suffered substantial damage as a result of a production disaster and that he is unable to obtain from commercial banks, cooperative lending agencies, or other responsible sources the credit necessary for continuing his farming operations.

(d) *Certification by County Committee.* Before a loan may be made the County Committee must certify on Form FHA-202 that, to the best of its knowledge and belief:

(1) The applicant has suffered substantial damage as a result of a production disaster.

(2) The applicant is unable to obtain from commercial banks, cooperative lending agencies, or other responsible sources the credit necessary for continuing his farming operations, and

(3) The applicant has the necessary experience and ability and will honestly endeavor to carry out the undertakings and obligations required of him under the loan.

§ 381.5 Loan purposes. (a) Disaster loans may be made for any of the agricultural purposes indicated in this section. However, the exact purposes for which loan funds will be advanced in a given area will be determined by the type of farming carried on in that area, the nature of the disaster which occurred, and the nature and extent of losses suffered by applicants for loans. Simultaneously with the designation of a disaster area the State Director will be notified of the specific purposes for which Disaster loans may be made in that area. Such purposes may include:

(1) The purchase of feed, seed, fertilizer, and insecticides, and for other essential farm and home operating expenses.

(2) The purchase of livestock.

(3) The purchase of orchard and citrus nursery stock.

(4) The purchase of farm and home equipment, or the repair thereof.

(5) The replacement or repair of buildings, fences, drainage and irrigation systems on individual farms.

(6) The leveling of land and the clearing of debris therefrom necessary as a direct result of the disaster.

(7) The payment of current taxes on real and personal property, water charges, and current interest on real estate obligations where it appears that anticipated income will support such obligations.

(8) Other agricultural purposes not inconsistent with the limitations set forth in connection with any of the above purposes.

(9) Expenses incident to the making of such loans.

(b) Disaster loans will not be made for the purpose of refinancing existing debts, either secured or unsecured, or for the payment of cash rent.

§ 381.6 Rates and terms. Disaster loans will bear interest from the date of the advance at the rate of 3 percent per annum on the unpaid principal balance. Such loans will be scheduled for repayment in accordance with the following policies:

(a) Except as provided in paragraph (c) of this section advances made for annual operating expenses, including advances for the production or purchase of feed for livestock, and the purchase of livestock to be fed for the market, will be scheduled for repayment when the principal income from the year's operations normally will be received or when the principal income from the sale of the livestock or livestock products normally can be expected.

(b) Except as provided in paragraph (c) of this section, advances for purposes other than annual operating expenses will be scheduled for repayment over the minimum period of time consistent with the anticipated ability of the borrower to repay, but in no instance may the repayment schedule extend beyond the useful life of the principal items of security property. Ordinarily, such advances will not be scheduled for repayment over a period in excess of five years from the date of the advances, if secured by liens on chattel property, or ten years from such date if secured by liens on real estate. In exceptional cases, however, when justified because of the nature of the disaster and the extent of losses suffered by the applicant, a longer repayment period (not to exceed ten years if the loans are secured by liens on chattel property, or twenty years if secured by liens on real estate) may be allowed upon the prior approval of the Administrator.

(c) Advances will be scheduled for repayment in at least annual installments, except that any part or, if necessary, all of the first installment on advances made for purposes other than annual operating expenses may be scheduled for repayment at the end of the second crop year following the date of the loan when the borrower's anticipated expenses will be abnormally high because of the disaster and the balance available for debt payment is not sufficient to enable the borrower to make payments on his Disaster loan at the end of the first crop year. If the borrower's anticipated in-

come will be abnormally low because of the disaster, such as in a fruit producing area where little or no fruit production is expected the first year, deferments on advances for annual operating expenses may be granted for the same period and under the same circumstances. If unusual conditions exist with respect to any individual case, a longer period of deferment may be authorized upon the prior approval of the Administrator.

§ 381.7 Security requirements. Except as provided in this section, each Disaster loan will be secured for the full amount of the loan by the following:

(a) A first lien on all livestock, farm machinery and farm equipment purchased with proceeds of the loan.

(b) A first lien on all crops growing or to be grown. However, if the Farmers Home Administration will make no advance in connection with a particular crop which is under lien as security for advances made by another creditor, the best lien obtainable will be taken on such crop. When a loan is made to a tenant, the landlord will be required to subordinate all his interest in crops being financed with proceeds of the loan unless the Government's lien on crops will be junior only to the landlord's claim for reasonable and customary share rent for the current year as provided for in a written lease, or as evidenced by memorandum on Form FHA-32, "Subordination Agreement," or similar form, State Directors are authorized to waive the requirement that the landlord subordinate his interest with respect to borrowers paying cash or standing rent when (1) a loan is being made to an applicant already indebted on a Disaster loan which was obtained prior to January 1, 1951, and amortized over more than one year and (2) the borrower will operate the same farm under the same lease.

(c) A first lien on livestock to be fed for market and productive livestock, other than that used for subsistence purposes, if loans are made to purchase or produce feed for such livestock. However, if it is not possible to obtain a first lien on such livestock, a junior lien will be acceptable provided the applicant has sufficient equity in the property to justify such action, nondisturbance agreements are obtained from prior lien holders, and prior lien holders agree in writing to a division of the income to be received from the livestock which will permit the borrower to repay his Disaster loan in accordance with the policies expressed herein.

(d) The best lien obtainable on as much of the livestock, farm machinery and farm equipment of security value owned by the applicant at the time the loan is made as the loan approving official determines necessary to secure reasonably the Disaster loan.

(e) An assignment of sufficient proceeds from the sale of agricultural products to assure repayment in accordance with the policies prescribed herein, if the loan is to be repaid from proceeds which can be assigned. In addition, assignments of crop insurance policies, if carried by the borrower, will be required.

(f) Disaster loans made primarily for real estate repairs and improvements, including the rehabilitation of orchards and groves, which require longer periods for repayment than would be prudent to encumber livestock and equipment will be secured only by real estate liens, provided the applicants have sufficient equity in their real estate to secure adequately their Disaster loans. Liens on real estate, in addition to liens on crops and chattel property, will be taken in other cases if required by the loan approving official because of the amount of the loan, the financial condition of the applicant, or other peculiar circumstances, and the applicant has sufficient equity in his real estate to justify such action. When a Disaster loan is to be secured by a lien on real estate, the applicant will be required to provide, at his expense, a certificate of title prepared by a title company or a local practicing attorney covering a period of time determined by the representative of the Office of the Solicitor as being sufficient to provide satisfactory evidence of title, a mortgagee's title insurance or an abstract of title. If a certificate of title is to be accepted and the real estate to be offered as security is subject to a lien securing an advance made by an established real estate lending institution, or has been transferred recently by the Federal Government, the certificate need cover only the period of time since the date of the encumbrance or transfer, but it must show all later encumbrances against the property. Any evidence of title presented pursuant to this section will be examined by the representative of the Office of the Solicitor to determine adequacy of title and to prepare loan closing instructions.

(g) Before a Disaster loan is closed, the applicant will be required to obtain nondisturbance agreements from creditors holding liens on workstock and equipment essential to the farming operations to be financed with proceeds of the loan, provided the debts owed such creditors are delinquent or payments will fall due before the next harvest. In such cases the creditors will agree for the applicant to retain the property involved over a sufficient period of time to protect the interest of the Government. Similar agreements will be obtained from other creditors whose debts are likely to jeopardize the applicant's farming operations.

§ 381.8 Advances resulting in permanent real estate improvements. Loans made primarily for the purpose of making permanent improvements to real estate will be made generally to the owner of the real estate. In exceptional cases, however, a loan for this purpose may be made to a tenant when adequate chattel security can be obtained, but in such cases the landlord will be required to compensate the tenant for the improvements to the real estate.

§ 381.9 Loan forms and routines—(a) Application and certifications. Applications for Disaster loans and certifications by the County Committee in connection therewith will be obtained on Form FHA-202. Applications may be made at

the County Office of the Farmers Home Administration.

(b) *Promissory note.* The applicant will be required to execute Form FHA-203, "Promissory Note," for the full amount of each advance.

(c) *Loan voucher.* The applicant will be required to execute Form FHA-5, "Loan Voucher," for the total amount of each advance as indicated in Form FHA-203.

(d) *Security instruments.* (1) When chattels are to be taken as security for a loan, the applicant will execute Form FHA-30—, "Crop and Chattel Mortgage."

(2) When real estate is to be taken as security for a loan, the applicant will execute Form FHA-76—, "Real Estate Mortgage."

(3) Form FHA-80, "Assignment of Proceeds from the Sale of Agricultural Products," or other form approved by the representative of the Office of the Solicitor will be used to obtain an assignment of proceeds from the sale of farm, dairy, or other agricultural products.

(4) When necessary to meet the requirements of § 381.7, the applicant will be required to obtain a subordination agreement from his landlord and other creditors. Form FHA-32, or similar form approved by the representative of the Office of the Solicitor, will be used for this purpose. When the landlord is required to subordinate his interest in the borrower's crops for rent and Form FHA-32 is used for this purpose, the words "except that this subordination does not apply to the landlord's(s') interest in the crops for rent for the crop year for which the loan is made," will be deleted.

(e) *Lien searches.* Applicants are required to obtain and pay the cost of lien searches. The cost of lien searches may be paid from the proceeds of loan checks when necessary.

(f) *Advances.* Disaster loan dockets may be submitted to the Area Finance Office for (1) immediate disbursement of the full amount of the loan, or (2) as limited herein, disbursement in more than one advance, but not to exceed four advances. Disaster loans may be disbursed in more than one advance only if (1) the circumstances in an individual case necessitate such action to protect properly the interest of the Government and the borrower, and (ii) all of the advances for operating expenses are related to the same crop year, but in no event will any of the future payment vouchers be scheduled for payment more than twelve months from the date of the first advance.

§ 381.10 Loan approval authority. (a) Subject to the policies and procedures contained in §§ 381.2 to 381.9, State Directors are authorized to approve disaster loans in amounts which will not cause the outstanding principal balance on such loans to exceed \$12,000 for any one borrower. State Directors may redelegate to State Field Representatives and County Supervisors authority to approve Disaster loans subject to the following limitations:

(1) State Field Representatives may be authorized to approve Disaster loans in amounts which will not cause the outstanding principal balance on such loans to exceed \$5,000 for any one borrower.

(2) County Supervisors may be authorized to approve Disaster loans in amounts which will not cause the outstanding principal balance on such loans to exceed \$2,500 for any one borrower.

(b) Other indebtedness owed the Farmers Home Administration (Farm Ownership, Farm Housing, Water Facilities, or other Operating loans) by an applicant for a Disaster loan will not affect the monetary limitations established in this section for the approval of Disaster loans or the applicant's eligibility therefor. However, such debts will be considered along with other indebtedness owed by the applicant in determining soundness of the loan and repayment ability.

§ 381.11 Servicing Disaster loans—(a) General. Farmers Home Administration regulations, except those contained in Part 384 and § 371.5 (b) of this chapter, containing the policies and procedures for the servicing of other operating loans under the Production and Subsistence Loan program will be followed in the servicing of Disaster loans.

(b) *Release of security other than real estate.* (1) County Supervisors and Disaster Loan Supervisors are authorized to release mortgaged property, and proceeds derived from the sale thereof, when the security property has been sold for its fair market value; provided the proceeds are used for one or more of the following purposes:

(i) To make payments on debts due the Farmers Home Administration.

(ii) To pay necessary harvesting and marketing expenses not provided for in the loan or otherwise, in connection with crops, livestock, and similar items mortgaged to the Farmers Home Administration which are sold in the usual course of operating the farm business. The amount released for this purpose, however, will be limited to a fixed amount per unit of sale (box, ton, hundred-weight, and so forth) as agreed upon between the County Supervisor or Disaster Loan Supervisor and the borrower at the time the loan was made or prior to the harvest season, and the borrower should be required to account for the proceeds of each sale before a further release for the above purposes is approved.

(iii) To make payments on debts owed to other creditors and to make capital purchases, as agreed upon when the loan was made, and to meet farm and home operating expenses for the succeeding crop year; provided (a) amounts due the Farmers Home Administration and creditors with liens superior to those in favor of the Farmers Home Administration have been paid the amounts due for the year, and (b) the income released for these purposes is normal farm income.

(iv) To pay necessary farm and home operating expenses and other essential expenses which must be met prior to receipt of the primary income for the year's operations; provided no loan has been made for the current year; a com-

RULES AND REGULATIONS

plete budget for the year, including such expenses, has been developed and approved by the State Director or his authorized delegatee; and, the income released is normal farm income.

(v) To purchase or acquire through exchange property more suitable to the borrower's needs, subject to the following conditions:

(a) The new property must be made subject to a lien in favor of the Farmers Home Administration by the execution of a new security instrument (or by the operation of the "replacement" or "after-acquired property" clauses, in accordance with State Instructions). The new property, together with any additional proceeds that may be applied on the indebtedness, will have security value to the Farmers Home Administration at least equal to that of the lien formerly held by the Farmers Home Administration on the old property. However, when the newly acquired property is not valued at more than \$25, a new security instrument covering such property will not be required.

(b) When a new security instrument is necessary, it will be taken at the time of acquisition of the new property. However, in individual cases, the County Supervisor or Disaster Loan Supervisor may delay the taking of a new security instrument not to exceed one year or until a new mortgage is necessary for other reasons, whichever is earlier, when (1) adequate security (the present value, as determined by a conservative appraisal, of the borrower's property remaining under mortgage to the Farmers Home Administration is substantially greater than the amount of the debt) will continue to exist, and (2) the borrower's account due the Farmers Home Administration is current during such period of delay.

(c) If the property being acquired is valued in excess of \$2,500, the transaction must be reviewed by the State Field Representative prior to approval of the release.

(vi) To make payments to other creditors having liens on the property sold which are superior to the liens of the Farmers Home Administration, provided the property is sold for its fair market value and any amount remaining after payments are made to the other creditors is applied on the borrower's indebtedness with the Farmers Home Administration, or is released under the conditions and for one or more of the purposes specified herein.

(2) State Directors are authorized to release mortgaged property, and proceeds derived from the sale thereof, for one or more of the following purposes:

(i) To pay from normal farm income necessary farm and home operating expenses which must be met before the due date of the next unpaid installment on the loan and prior to receipt of the primary income for the year's operations, provided such expenses were included in the budget developed in connection with the loan, and the loan was made with the understanding that

funds would be released for this purpose. This would be appropriate, for example, where a borrower's primary income will be from the sale of lambs, and the loan was made with the understanding that wool income would be released to meet farm and home operating expenses which had to be paid prior to the due date of the next unpaid installment on the loan and prior to the time the lamb income would be received.

(ii) To pay costs (not normally recurring) that are directly necessary for the preservation of the remaining security property.

(c) Other releases. In truck or specialty crop areas when prior approval has been obtained from the National Office authorizing the financing of successive or later maturing crops through the use of crop income rather than by advancing additional loan funds, the Administrator or his authorized delegatee will issue appropriate authorizations to be exercised in such areas for the release of crops for such purposes.

SUBPART B—SERVICING LOANS MADE UNDER ITEM "LOANS TO FARMERS, PROPERTY DAMAGE", IN PUBLIC LAW 71, 81ST CONGRESS

§ 381.21 General. Under the First Deficiency Appropriation Act, 1949, funds originally appropriated by the Second Deficiency Appropriation Act of 1948 for making loans through June 30, 1949, were made available until June 30, 1950, and were used for making loans to farmers whose property was destroyed as a result of floods, storms or other natural calamity occurring during the 1948 and 1949 calendar years.

§ 381.22 Loan servicing procedures. Farmers Home Administration regulations, except those contained in Part 364 of this chapter, containing the policies and procedures for the servicing of other operating loans under the Production and Subsistence Loan program, will be followed in the servicing of property damage loans.

[SEAL] DILLARD B. LASSETER,
Administrator,
Farmers Home Administration.

APRIL 17, 1951.

Approved: May 1, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-5230; Filed, May 4, 1951;
8:51 a. m.]

TITLE 7—AGRICULTURE

Chapter III—Bureau of Entomology and Plant Quarantine, Department of Agriculture

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

OVERTIME, NIGHT, AND HOLIDAY INSPECTION AND QUARANTINE ACTIVITIES AT BORDER, COASTAL, AND AIR PORTS

Pursuant to the authority vested in the Secretary of Agriculture by Public

Law 735, 81st Congress, approved August 28, 1950, to pay employees of the Department performing inspection, certification or quarantine services relating to imports into and exports from the United States for all overtime, night, or holiday work performed by them and to accept reimbursement for such payment from persons for whom such work is performed, Chapter III of Title 7 of the Code of Federal Regulations is amended by adding thereto the following Part 354.

§ 354.1 Overtime work at border ports, seaports, and airports. Any person, firm, or corporation having ownership, custody or control of plants, plant products, or other commodities or articles subject to inspection, certification, or quarantine under this chapter, and who requires the services of an employee of the Bureau of Entomology and Plant Quarantine on a holiday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime request the Bureau inspector in charge to furnish inspection, quarantine, or certification service during such overtime period and shall pay the Secretary of Agriculture therefor at the rate of \$2.40 per man hour for service so furnished, provided that a minimum charge of \$2.40 shall be made for any such service rendered. It will be administratively determined from time to time which days constitute holidays.

The rates prescribed herein shall also be applicable to overtime work heretofore furnished pursuant to this statute under any contract or other arrangement.

The purpose of this amendment is to establish a uniform hourly rate of payment for all overtime services furnished in accordance with the act of August 28, 1950. Determination of the costs of such overtime inspection depends entirely upon facts within the knowledge of the Department of Agriculture. It is to the benefit of those who require such overtime service, as well as the public generally, that this amendment be made effective at the earliest practicable date. Accordingly, pursuant to the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238), it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication. (Pub. Law 735, 81st Cong.)

Effective date. The foregoing amendment shall be effective upon publication in the **FEDERAL REGISTER**.

Done at Washington, D. C., this 1st day of May 1951.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.
[F. R. Doc. 51-5229; Filed, May 4, 1951;
8:51 a. m.]

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

[Amdt. 3]

PART 421—DRY EDIBLE BEAN CROP INSURANCE

SUBPART—REGULATIONS FOR 1950 AND SUCCEEDING CROP YEARS

The above-identified regulations, as amended (14 F. R. 7684, 15 F. R. 2485, 9034), are hereby amended with respect to bean crops insured for the 1951 and succeeding crop years as follows:

1. Section 1 of the policy shown in § 421.32, as amended, is amended to read as follows:

1. *Classes of beans insured.* The class(es) of beans insured shall be shown on the county actuarial table. The class(es) of beans insured the first crop year of the contract shall be those designated by the Corporation for that year and shall be shown on the county actuarial table on file in the county office at the time the application for insurance is submitted. For each subsequent crop year, the class(es) shall be shown on the county actuarial table on file in the county office at least 15 days prior to the applicable cancellation date preceding the crop year for which such class(es) apply.

2. Section 7 of the policy shown in § 421.32 is amended to read as follows:

7. *Predetermined price for valuing production.* In determining any loss under the contract, the value of the production shall be determined on the basis of the applicable price(s) which the Corporation shall establish annually. The price(s) for the first crop year of the contract shall be those established by the Corporation for that year and shall be shown on the county actuarial table on file in the county office at the time the application for insurance is submitted. For each subsequent crop year, the price(s) shall be shown on the county actuarial table on file in the county office at least 15 days prior to the applicable cancellation date preceding the crop year for which such price(s) apply.

In any year, any production which is of such poor quality that it will not meet any U. S. Grade or pick shown on the county actuarial table shall be valued at the lesser of the lowest price shown on the county actuarial table for that class of beans or the local market value of such beans as determined by the Corporation. Any appraised production shall be valued on the basis of the Corporation's estimate of the applicable grade or pick.

3. Section 17 of the policy shown in § 421.32 is amended by changing paragraph (a) to read as follows:

(a) The amount of loss with respect to any insurance unit shall be determined by (1) multiplying the planted acreage (exclusive of any acreage to which insurance did not attach) by the applicable coverage per acre, (2) subtracting therefrom the value (based on the applicable price(s) set forth on the county actuarial table) of the total production, and (3) multiplying the remainder by the insured interest in such unit. However, if the planted acreage on the insurance unit exceeds the insured acreage on the insurance unit, or if the premium computed for the planted acreage is more than the premium computed for the acreage and interest as approved by the Corporation on the acreage report, the amount of loss so determined shall be reduced. This reduction shall be made on the basis of the ratio of the insured acreage to the planted acreage except that the Corporation may elect to make

the reduction on the basis of the ratio of the premium computed for the acreage and interest as approved by the Corporation on the acreage report to the premium computed

for the planted acreage. The total production for an insurance unit shall include all production determined in accordance with the following production schedule.

PRODUCTION SCHEDULE

Acreage classification

1. Acreage on which beans are threshed.

2. Acreage released by the Corporation and not pulled or cut.

3. Acreage released by the Corporation after pulling or cutting but before threshing.

4. Acreage put to another use without the consent of the Corporation.

5. Acreage with reduced yield due solely to cause(s) not insured against.

6. Acreage with reduced yield due partially to cause(s) not insured against and partially to cause(s) insured against.

Total production (cwt.—Net weight)

Actual production of beans threshed.

That portion of the appraised production for such acreage which is in excess of the number of cwt. determined by (1) subtracting the total coverage for such acreage from what the total coverage for such acreage would be if the acreage were threshed, and (2) dividing the result thus obtained by the applicable base price shown on the county actuarial table.

That portion of the appraised production for such acreage which is in excess of the number of cwt. determined by (1) subtracting the total coverage for such acreage from what the total coverage for such acreage would be if the acreage were threshed and (2) dividing the result thus obtained by the applicable base price shown on the county actuarial table.

Appraised production for such acreage but not less than the product of (1) such acreage and (2) the cwt. equivalent of the coverage per acre for threshed acreage determined on the basis of the applicable price shown on the county actuarial table.

Appraised number of cwt. by which production for such acreage has been reduced, but not less than the product of (1) such acreage and (2) the cwt. equivalent of the coverage per acre for threshed acreage determined on the basis of the applicable price shown on the county actuarial table, minus any threshed beans.

Appraised number of cwt. by which production has been reduced because of cause(s) not insured against.

Adopted by the Board of Directors on April 25, 1951.

(Secs. 506, 516, 52 Stat. 73, 77, as amended; 7 U. S. C. 1506, 1516. Interprets or applies secs. 507-509, 52 Stat. 73-75, as amended; 7 U. S. C. 1507-1509.)

[SEAL]

R. J. POSSON,
Secretary,

Federal Crop Insurance Corporation.

Approved: May 1, 1951.

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-5231; Filed, May 4, 1951;
8:51 a. m.]

recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than May 7, 1951. Shipments of oranges, grown in the State of Florida, have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since September 11, 1950, and will so continue until May 7, 1951; the recommendation and supporting information for continued regulation subsequent to May 6 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on May 1; such meeting was

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Orange Reg. 197]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.524 Orange Regulation 197—
(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the

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held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., May 7, 1951, and ending at 12:01 a. m., e. s. t., June 4, 1951, no handler shall ship:

(i) Any oranges, except Temple oranges, grown in Regulation Area I which grade U. S. No. 2 Bright, U. S. No. 2, U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(ii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade;

(iii) Any oranges, except Temple oranges, grown in Regulation Area II which grade U. S. No. 2 or U. S. No. 2 Bright unless such oranges (a) are in the same container with oranges which grade at least U. S. No. 1 Russet and (b) are not in excess of 50 percent, by count, of the number of all oranges in such container;

(iv) Any oranges, except Temple oranges, grown in Regulation Area I or Regulation Area II which are of a size larger than a size that will pack 126 oranges, packed in accordance with the requirements of a standard pack in a standard nailed box; or

(v) Any Temple oranges, grown in Regulation Area I or Regulation Area II, which grade U. S. No. 2 Russet, U. S. No. 3, or lower than U. S. No. 3 grade.

(2) As used in this section, the terms "handler," "ship," "Regulation Area I," "Regulation Area II," and "Growers Administrative Committee" shall each have the same meaning as when used in said amended marketing agreement and order; and the terms "U. S. No. 1 Russet," "U. S. No. 2 Bright," "U. S. No. 2," "U. S. No. 2 Russet," "U. S. No. 3," "standard pack," "container," and "standard nailed box" shall each have the same meaning as when used in the revised United States Standards for Oranges (7 CFR 51.192).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 2d day of May 1951.

[SEAL] S. R. SMITH
Director, Fruit and Vegetable
Branch, Production and Mar-
keting Administration.

[F. R. Doc. 51-5263; Filed, May 4, 1951;
9:00 a. m.]

[Grapefruit Reg. 141]

PART 933—ORANGES, GRAPEFRUIT, AND TANGERINES GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.525 Grapefruit Regulation 141—

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR, Part 933), regulating the handling of oranges, grapefruit, and tangerines grown in the State of Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than May 7, 1951. Shipment of grapefruit grown in the State of Florida, have been subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order, since September 11, 1950, and will so continue until May 7, 1951; the recommendation and supporting information for continued regulation subsequent to May 6 was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on May 1; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit this section including the effective time thereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) During the period beginning at 12:01 a. m., e. s. t., May 7, 1951, and ending at 12:01 a. m., e. s. t., June 4, 1951, no handler shall ship:

(i) Any grapefruit of any variety, grown in Florida which grade U. S. No. 3 or lower than U. S. No. 3 grade;

(ii) Any white seeded grapefruit, grown in Regulation Area I which grade U. S. No. 2 Russet;

(iii) Any white seeded grapefruit, grown in Florida, which are of a size smaller than a size that will pack 80 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box;

(iv) Any pink seeded grapefruit, grown in Florida, which are of a size smaller than a size that will pack 96 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box; or

(v) Any seedless grapefruit, grown in Florida, which are of a size smaller than a size that will pack 126 grapefruit, packed in accordance with the requirements of a standard pack, in a standard nailed box.

(2) As used in this section, "Regulation Area I," "handler," "variety," "ship," and "Growers Administrative Committee" shall have the same meaning as when used in said amended marketing agreement and order; and "U. S. No. 2 Russet," "U. S. No. 3," "standard pack," and "standard nailed box" shall have the same meaning as when used in the revised United States Standards for Grapefruit (7 CFR 51.191).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 2d day of May 1951.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Branch, Production and Mar-
keting Administration.

[F. R. Doc. 51-5262; Filed, May 4, 1951;
8:59 a. m.]

[Lemon Reg. 380, Amdt. 1]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 14 F. R. 3612), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended, and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

2. It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rule-making procedure (60 Stat. 237; 5 U. S. C. 1001 et

seq.) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, is insufficient; and this amendment relieves restrictions on the handling of lemons grown in the State of California or in the State of Arizona.

Order, as amended. The provisions in paragraph (b) (1) (ii) of § 953.487 (Lemon Regulation 380, 16 F. R. 3640) are hereby amended to read as follows:

(ii) District 2: 475 carloads.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 3d day of May 1951.

[SEAL]

S. R. SMITH,

Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 51-5320; Filed, May 4, 1951; 9:03 a. m.]

[Lemon Reg. 381]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.488 Lemon Regulation 381—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 14 F. R. 3612), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement

and order; the recommendation and supporting information for regulation during the period specified in this section was promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on May 2, 1951, such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., May 6, 1951, and ending at 12:01 a. m., P. s. t., May 13, 1951, is hereby fixed as follows:

- (i) District 1: Unlimited movement;
- (ii) District 2: 500 carloads;
- (iii) District 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is set forth below and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "carloads," "prorate base," "District 1," "District 2," and "District 3," shall have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 3d day of May 1951.

[SEAL]

S. R. SMITH,

Director, Fruit and Vegetable Branch, Production and Marketing Administration.

PRORATE BASE SCHEDULE

DISTRICT NO. 2

[Storage date: Apr. 29, 1951]

[12:01 a. m. May 6, 1951, to 12:01 a. m. May 20, 1951]

Handler	Prorate base (percent)
Total	100.000
American Fruit Growers, Inc., Corona	.525
American Fruit Growers, Inc., Fullerton	1.188
American Fruit Growers, Inc., Upland	.389
Eadington Fruit Co.	1.105
Hazeltine Packing Co.	.821
Ventura Coastal Lemon Co.	1.173
Ventura Pacific Co.	1.591
Glendora Lemon Growers Association	1.933
La Verne Lemon Association	.847
La Habra Citrus Association	2.126

PRORATE BASE SCHEDULE—Continued

DISTRICT NO. 2—continued

Handler	Prorate base (percent)
Yorba Linda Citrus Association	0.937
Escondido Lemon Association	4.634
Alta Loma Heights Citrus Association	.625
Etzwanda Citrus Association	.329
Mountain View Fruit Association	.460
Old Baldy Citrus Association	.964
San Dimas Lemon Association	1.901
Upland Lemon Growers Association	5.775
Central Lemon Association	1.414
Irvine Citrus Association	1.168
Placentia Mutual Orange Association	1.020
Corona Citrus Association	.793
Corona Foothill Lemon Co.	3.403
Jameson Co.	1.703
Arlington Heights Citrus Co.	1.681
College Heights Orange & Lemon Association	2.287
Chula Vista Citrus Association	1.061
El Cajon Valley Citrus Association	.171
Escondido Cooperative Citrus Association	.330
Fallbrook Citrus Association	2.596
Lemon Grove Citrus Association	.476
Carpinteria Lemon Association	1.604
Carpinteria Mutual Lemon Association	1.759
Goleta Lemon Association	3.203
Johnston Fruit Co.	4.030
North Whittier Heights Citrus Association	1.024
San Fernando Heights Lemon Association	1.390
Sierra Madre-Lamanda Citrus Association	1.564
Briggs Lemon Association	1.898
Culbertson Lemon Association	1.386
Fillmore Lemon Association	1.581
Oxnard Citrus Association	4.354
Rancho Sespe	1.229
Santa Clara Lemon Association	2.602
Santa Paula Citrus Fruit Association	3.352
Saticoy Lemon Association	2.063
Seaboard Lemon Association	3.292
Somis Lemon Association	2.431
Ventura Citrus Association	.591
Ventura County Citrus Association	.011
Limoneira Co.	2.258
Teague-McKevett Association	.994
East Whittier Citrus Association	1.372
Leflingwell Rancho Lemon Association	.982
Murphy Ranch Co.	1.877
Chula Vista Mutual Lemon Association	.579
Index Mutual Association	.957
La Verne Cooperative Citrus Association	3.019
Orange Belt Fruit Distributors	.858
Ventura County Orange & Lemon Association	1.670
Whittier Mutual Orange & Lemon Association	.155
Ayoub, Fred	.003
Evans Bros. Packing Co.	.009
Johnson, Fred	.049
Knapp, John C., Packing Co.	.000
Lstimer, Harold	.076
MacDonald Fruit Co.	.004
Paramount Citrus Association, Inc.	.300
San Antonio Orchard Co.	.047
Uyeji, Kikuo	.001

[F. R. Doc. 51-5319; Filed, May 4, 1951; 9:03 a. m.]

[Orange Reg. 370]

PART 966—ORANGES GROWN IN CALIFORNIA OR IN ARIZONA

LIMITATION OF SHIPMENTS

§ 966.516 Orange Regulation 370—
(a) *Findings.* (1) Pursuant to the pro-

RULES AND REGULATIONS

visions of Order No. 66, as amended (7 CFR Part 966; 14 F. R. 3614), regulating the handling of oranges grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Orange Administrative Committee, established under the said amended order, and upon other available information, it is hereby found that the limitation of the quantity of such oranges which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication thereof in the *FEDERAL REGISTER* (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Orange Administrative Committee on May 3, 1951, such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of oranges grown in the State of California or in the State of Arizona which may be handled during the period beginning 12:01 a. m., P. s. t., May 6, 1951, and ending at 12:01 a. m., P. s. t., May 13, 1951, is hereby fixed as follows:

- (i) *Valencia oranges.* (a) Prorate District No. 1: 500 carloads;
- (b) Prorate District No. 2: 100 carloads;
- (c) Prorate District No. 3: 100 carloads;
- (d) Prorate District No. 4: Unlimited movement.

(ii) *Oranges other than Valencia oranges.* (a) Prorate District No. 1: No movement;

(b) Prorate District No. 2: 700 carloads;

(c) Prorate District No. 3: No movement;

(d) Prorate District No. 4: No movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended order, is hereby fixed in accordance with the prorate base schedule which is set forth below and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "varieties," "carloads," and "prorate base" shall have the same meaning as when used in the said amended order; and the terms "Prorate District No. 1," "Prorate District No. 2," "Prorate District No. 3," and "Prorate District No. 4" shall each have the same meaning as given to the respective terms in § 966.107, as amended (15 F. R. 8712), of the current rules and regulations (7 CFR § 966.103 et seq.), as amended (15 F. R. 8712).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup. 608c)

Done at Washington, D. C., this 4th day of May 1951.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable
Branch, Production and Mar-
keting Administration.

PRORATE BASE SCHEDULE

[12:01 a. m., P. s. t., May 6, 1951, to 12:01 a. m., P. s. t., May 13, 1951]

VALENCIA ORANGES

Prorate District No. 1

Handler	Prorate base (percent)
Total	100.0000

A. F. G. Lindsay	2.0144
A. F. G. Porterville	1.7970
Ivanhoe Cooperative Association	.5238
Sandilands Fruit Co.	.8183
Dofflemyer & Son, W. Todd	.4277
Earliest Orange Association	1.7343
Elderwood Citrus Association	.8452
Exeter Citrus Association	2.1428
Exeter Orange Growers Association	.6482
Hillside Packing Association	2.2435
Ivanhoe Mutual Orange Associa- tion	.8607
Klink Citrus Association	4.5654
Lemon Cove Association	1.5401
Lindsay Citrus Growers Associa- tion	3.0312
Lindsay Cooperative Citrus Associa- tion	2.0905
Lindsay Fruit Association	2.4719
Lindsay Orange Growers Associa- tion	
Orange Cove Citrus Association	3.1915
Orange Packing Co.	.9422
Orosi Foothill Citrus Association	1.6681
Paloma Citrus Fruit Association	.6440
Rocky Hill Citrus Association	3.1590
Sanger Citrus Association	2.3725
Sequoia Citrus Association	.8431
Stark Packing Corp.	4.3795
Visalia Citrus Association	3.0984
Waddell & Son	2.4939
Baird Neece Corp.	1.7519
Grand View Heights Citrus Associa- tion	4.5833
Magnolia Citrus Association	2.7584
Porterville Citrus Association	
The	.7977

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 1—Continued

Handler	Prorate base (percent)
Richgrove-Jasmine Citrus Associa- tion	1.3360
Strathmore Cooperative Associa- tion	3.0994
Strathmore District Orange Associa- tion	1.1589
Strathmore Fruit Growers Associa- tion	1.4016
Strathmore Packing House	1.4907
Sunflower Packing Association	2.7553
Sunland Packing House Co.	3.7079
Tule River Citrus Association	.8575
La Verne Cooperative Citrus Associa- tion	.1014
Lindsay Mutual Groves	1.4876
Martin Ranch	.8666
Orange Cove Orange Growers	1.8119
Webb Packing Co.	.1787
Woodlake Packing House	1.0487
Anderson Packing Co., R. M.	.6750
Baker Bros.	1.0392
Bear State Packers, Inc.	.0080
California Citrus Groves, Inc., Ltd.	2.6682
Campbell, Ralph D. & P. Agnes	.0267
Chess Co., Meyer W.	.2936
Darby Fred J.	.1748
Dotts, Vern.	.0480
Dubendorf, John W.	.1308
Fair West Produce Distributors	.5336
Foran, Pat.	.1281
Hass, W. H.	.0801
Harding & Leggett	2.5567
Independent Growers, Inc.	2.2881
Kim, Chas. N.	.0054
Kroells Packing Co.	2.2071
Lo Bue Bros.	.7284
Maas, W. A.	.0820
Marks, W. & M.	.2454
Randolph Marketing Co.	1.5635
Reimers, Don H.	.1658
Schilling, Joseph	.1601
Sky Acres Ranch	.2267
Smith, E. L.	.0534
Swenson, L. W.	.0039
Terry, Floyd	.0027
Woodlake Heights Packing Corp.	.5618
Zaninovich Bros. Inc.	.4901
<i>Prorate District No. 2</i>	
Total	100.0000
A. F. G. Alta Loma	.0918
A. F. G. Corona	.0569
A. F. G. Fullerton	.8467
A. F. G. Orange	.3773
A. F. G. Riverside	.1395
A. F. G. San Juan Capistrano	.5909
A. F. G. Santa Paula	.4718
Eadington Fruit Co., Inc.	5.6313
Hazeltine Packing Co.	.3980
Krinard Packing Co.	.2156
Placentia Cooperative Orange Associa- tion	.5124
Placentia Pioneer Valencia Growers Association	.6555
Signal Fruit Association	.1097
Azusa Citrus Association	.5306
Covina Citrus Association	1.2112
Covina Orange Growers Associa- tion	.6078
Damerel-Allison Association	.7831
Glendora Citrus Association	.5331
Glendora Mutual Orange Associa- tion	.3325
Valencia Heights Orchard Associa- tion	.4085
Gold Buckle Association	.4929
La Verne Orange Association	.6775
Anaheim Valencia Orange Associa- tion	1.3138
Fullerton Mutual Orange Associa- tion	2.6311
La Habra Citrus Association	1.1506
Yorba Linda Citrus Association,	
The	1.0191

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Escondido Orange Association	2.4353
Alta Loma Heights Citrus Association	.0510
Citrus Fruit Growers	.1992
Etiwanda Citrus Fruit Association	.0278
Mountain View Fruit Association	.0471
Old Baldy Citrus Association	.1171
Rialto Heights Orange Growers	.0644
Upland Citrus Association	.3561
Upland Heights Orange Association	.1469
Consolidated Orange Growers	1.8498
Frances Citrus Association	1.2021
Garden Grove Citrus Association	1.7406
Goldenwest Citrus Association	1.7989
Irvine Valencia Growers	3.1649
Olive Heights Citrus Association	2.1152
Santa Ana-Tustin Mutual Citrus Association	.9167
Santiago Orange Growers Association	3.8710
Tustin Hill Citrus Association	1.9468
Villa Park Orchards Association, The	2.1403
Bradford Bros., Inc.	.9281
Placentia Mutual Orange Association	
Placentia Orange Growers Association	3.6688
Yorba Orange Growers Association	.8667
Call Ranch	.0766
Corona Citrus Association	.4974
Jameson Co.	.0840
Orange Heights Orange Association	.6332
Crafton Orange Growers Association	.2705
East Highlands Citrus Association	.0673
Redlands Heights Groves	.1795
Redlands Orangedale Association	.1448
Rialto-Fontana Citrus Association	.0849
Break & Son, Allen	.0508
Bryn Mawr Fruit Growers Association	
Mission Citrus Association	.1029
Redlands Cooperative Fruit Association	.1332
Redlands Orange Growers Association	.2867
Redlands Select Groves	.1582
Rialto Orange Co.	.2668
Southern Citrus Association	.1902
Zillen Citrus Co.	.1510
Arlington Heights Citrus Co.	.0577
Brown Estate, L. V. W.	.1473
Gavilan Citrus Association	.1363
Highgrove Fruit Association	.1546
McDermont Fruit Co.	.0659
Monte Vista Citrus Association	.1318
National Orange Co.	.2457
Riverside Heights Orange Growers Association, The	.0543
Sierra Vista Packing Association	.0377
Victoria Ave. Citrus Association	.0470
Claremont Citrus Association	.2134
Indian Hill Citrus Association	.0976
Walnut Fruit Growers Association	.2037
West Ontario Citrus Association	.5619
El Cajon Valley Citrus Association	.1844
Escondido Cooperative Citrus Association	.2343
San Dimas Orange Growers Association	.3159
Canoga Citrus Association	.8451
North Whittier Heights Citrus Association	.9405
San Fernando Heights Orange Association	1.0087
Sierra Madre-Lamanda Citrus Association	.8056
Camarillo Citrus Association	.8477
Fillmore Citrus Association	1.4084
Mupu Citrus Association	.82068
Ojai Orange Association	.20354
Piru Citrus Association	.6963
	2.2219

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Rancho Sespe	0.8157
Santa Paula Orange Association	1.1021
Tapo Citrus Association	1.0208
Ventura County Citrus Association	.3794
Limoneira Co.	.4226
East Whittier Citrus Association	.3881
Murphy Ranch Co.	.8445
Anaheim Cooperative Orange Association	1.8516
Bryn Mawr Mutual Orange Association	.1409
Chula Vista Mutual Lemon Association	.0919
Euclid Avenue Orange Association	.6893
Foothill Citrus Union, Inc.	.1025
Golden Orange Groves, Inc.	.2321
Garden Grove Orange Cooperative, Inc.	1.0772
Highland Mutual Groves, Inc.	.0095
Index Mutual Association	.4364
La Verne Cooperative Citrus Association	1.7437
Mentone Heights Association	.0421
Olive Hillside Groves, Inc.	.5705
Orange Cooperative Citrus Association	
Redlands Foothill Groves	1.5284
Redlands Mutual Orange Association	.4534
Ventura County Orange & Lemon Association	.1926
Whittier Mutual Orange & Lemon Association	1.2244
Babijuice Corp. of California	.1613
Banks, L. M.	.8337
Becker, Samuel Eugene	.7275
Bennett Fruit Co.	.0115
Borden Fruit Co.	.1258
Cherokee Citrus Co., Inc.	.4993
Chess Co., Meyer W.	.1642
Dunning Ranch	.4310
Evans Bros. Packing Co.	.0515
Gold Banner Association	1.0088
Granada Hills Packing Co.	.1965
Granada Packing House	.0284
Hill Packing House, Fred A.	1.2323
Johnson, Fred	.0061
Knapp Packing Co., John C.	.5213
L Bar S Ranch	.1149
Lawson, William J.	.0072
Lima & Sons, Joe	.1315
Orange Belt Fruit Distributors	1.3325
Orange Hill Groves	.0072
Otts, Arnold	.0678
Panno Fruit Co., Carlo	1.0345
Patitucci, Frank L.	.0095
Placentia Orchard Co.	.5509
Riverside Citrus Association	.0382
Ronald, P. W.	.0222
Ronneberg	.0048
Schwaer, Erwin & Arthur	.0153
Summit Citrus Packers	.0172
Treesweet Products Co.	.2766
Wall, E. T.—Grower-Shipper	.1230
Western Fruit Growers, Inc.	.6181
Prorate District No. 3	
Total	100.0000

PRORATE BASE SCHEDULE—Continued

VALENCIA ORANGES—continued

Prorate District No. 3—Continued

Handler	Prorate base (percent)
Yuma Mesa Fruit Growers Association	8.3848
Leppia-Henry Produce Co.	10.0390
Maricopa Citrus Co.	1.0136
Pioneer Fruit Co.	2.7266
Clark & Sons Produce Co., J. H.	.3318
Commercial Citrus Packing Co.	1.0849
Hi Jolly Citrus Packing House	.3956
Hill Packing House, Fred A.	.0000
Ishikawa, Paul	.0529
Macchiarioli Fruit Co., James	1.1254
Mattingly, Charles A.	.2903
Messina & Sons, Mike	.0707
Orange Belt Fruit Distributor	.4687
Panno Fruit Co., Carlo	.1192
Paramount Citrus Association, Inc.	.0346
Potato House, The	.4619
Russo Bros.	.4846
Sharp Co., K. K.	.2403
Sunny Valley Citrus Packing Co.	2.5906
Terracciano Fruit Co.	.2625
Valley Citrus Packing Co.	1.9953
ALL ORANGES OTHER THAN VALENCIA ORANGES	
Prorate District No. 2	
Total	100.0000
A. F. G. Alta Loma	.2804
A. F. G. Corona	.3354
A. F. G. Fullerton	.0000
A. F. G. Orange	.0000
A. F. G. Riverside	.7733
A. F. G. Santa Paula	.0574
Eadington Fruit Co., Inc.	.0000
Hazeitine Packing Co.	.0588
Krinard Packing Co.	2.1035
Placentia Coop. Orange Association	.9879
Placentia Pioneer Valencia Growers Association	.0761
Signal Fruit Association	.6851
Azusa Citrus Association	.0000
Covina Citrus Association	.0000
Covina Orange Growers Association	.0000
Damerel-Allison Co.	.0118
Glendora Citrus Association	.0000
Glendora Mutual Orange Association	.0000
Puente Mutual Citrus Association	.0717
Valencia Heights Orchard Association	.0836
Gold Buckle Association	2.4907
La Verne Orange Association	5.1636
Anaheim Valencia Orange Association	.0000
Fullerton Mutual Orange Association	.0000
La Habra Citrus Association	.0000
Yorba Orange Citrus Association, The	.0000
Escondido Orange Association	.0000
Alta Loma Heights Citrus Association	.4476
Citrus Fruit Growers	1.1759
Etiwanda Citrus Fruit Association	.2161
Mountain View Fruit Association	.1814
Old Baldy Citrus Association	.5736
Rialto Heights Orange Growers	.3865
Upland Citrus Association	3.6100
Upland Heights Orange Association	1.8043
Consolidated Orange Growers	.0000
Graden Grove Citrus Association	.0380
Goldenwest Citrus Association	.0000
Olive Heights Citrus Association	.0000
Santiago Orange Growers Association	.0000
Villa Park Orchards Association, The	.0000
Bradford Bros., Inc.	.0000
Placentia Mutual Orange Association	.0000
Placentia Orange Growers Association	.0000
Yorba Orange Growers Association	.0000

RULES AND REGULATIONS

PRORATE BASE SCHEDULE—Continued
ALL ORANGES OTHER THAN VALENCIA ORANGES—
continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Call Ranch	0.9348
Corona Citrus Association	1.0485
Jameson Co.	.7905
Orange Heights Orange Association	3.4398
Crafton Orange Growers Association	1.3046
East Highlands Citrus Association	.4103
Redlands Heights Groves	.0000
Redlands Orangedale Association	.4199
Rialto-Fontana Citrus Association	.4543
Break & Son, Allen	.2791
Bryn Mawr Fruit Growers Association	.1190
Mission Citrus Association	.9616
Redlands Cooperative Fruit Association	1.5707
Redlands Orange Growers Association	1.0350
Redlands Select Groves	.4286
Rialto Orange Co.	.5844
Southern Citrus Association	.7173
United Citrus Growers	.7783
Zilen Citrus Co.	.2473
Arlington Heights Citrus Co.	.8488
Brown Estate, L. V. W.	2.2399
Gavilan Citrus Association	2.7806
Highgrove Fruit Association	.6947
McDermont Fruit Co.	2.0415
Monte Vista Citrus Association	1.8200
National Orange Co.	1.4186
Riverside Heights Orange Growers Association	1.2068
Sierra Vista Packing Association	.9560
Victoria Ave. Citrus Association	4.0385
Claremont Citrus Association	1.3392
College Heights Orange & Lemon Association	2.7011
Indian Hill Citrus Association	.8382
Pomona Fruit Growers Exchange	2.4237
Walnut Fruit Growers Association	.9206
West Ontario Citrus Association	1.6361
El Cajon Valley Citrus Association	.0000
Escondido Cooperative Citrus Association	1.6372
San Dimas Orange Growers Association	.0000
Canoga Citrus Association	1.4246
North Whittier Heights Citrus Association	.0000
San Fernando Heights Orange Association	.1862
Sierra Madre-Lamanda Citrus Association	.0147
Camarillo Citrus Association	.0543
Filmore Citrus Association	.0000
Ojai Orange Association	.0000
Piru Citrus Association	.0120
Rancho Sespe	.0000
Tapo Citrus Association	.0110
Ventura County Citrus Association	.0000
East Whittier Citrus Association	.0000
Murphy Ranch Co.	.0000
Anaheim Cooperative Orange Association	.0000
Bryn Mawr Mutual Orange Association	.6653
Chula Vista Mutual Lemon Association	.1052
Euclid Avenue Orange Association	3.7588
Foothill Citrus Union, Inc.	.6958
Garden Grove Orange Cooperative, Inc.	.0000
Golden Orange Groves, Inc.	.3589
Highland Mutual Groves, Inc.	.0000
Index Mutual Association	.0000
La Verne Cooperative Citrus Association	5.3302
Mentone Heights Association	.6689
Olive Hillside Groves, Inc.	.0052
Orange Cooperative Citrus Association	.0000
Redlands Foothill Groves	2.5859

PRORATE BASE SCHEDULE—Continued
ALL ORANGES OTHER THAN VALENCIA ORANGES—
continued

Prorate District No. 2—Continued

Handler	Prorate base (percent)
Redlands Mutual Orange Association	1.0995
Ventura County Orange & Lemon Association	.5091
Whittier Mutual Orange & Lemon Association	.0000
Allec Bros.	.0062
Babijuice Corp. of California	.0030
Banks, L. M.	.0000
Becker, Samuel Eugene	.0264
Bennett Fruit Co., Inc.	.0000
Book, Maynard C.	.0003
Borden Fruit Co.	.0000
Cherokee Citrus Association	.0125
Chess Co., Meyer W.	.6863
Christian, Guy	.0019
Dozier, Paul M.	.0051
Dunning Ranch	.0000
Evans Bros. Packing Co.	.1.3810
Gold Banner Association	1.2907
Granada Hills Packing Co.	.0000
Granada Packing House	.1144
Hill Packing Co., Fred A.	.6920
Holland, M. J.	.0285
Knapp Packing Co., John C.	.0000
Orange Belt Fruit Distributors	1.6404
Orange Hill Groves	.0245
Panno Fruit Co., Carlo	.0000
Paramount Citrus Association, Inc.	.1021
Placentia Orchard Association	.0000
Prescott, John A.	.0000
Pulos, James J.	.0489
Redlands Fruit Association, Inc.	.0204
Riverside Citrus Association	.1577
Ronald, P. W.	.0595
San Antonio Orchards Co.	2.1086
Stephens, T. F.	.2577
Summit Citrus Packers	.0761
Wall, E. T., Grower-Shipper	2.5836
Western Fruit Growers, Inc.	3.5374
[F. R. Doc. 51-5350; Filed, May 4, 1951; 11:12 a. m.]	

to inspection, certification, or quarantine under Subchapters B and F of this chapter, and who requires the services of an employee of the Bureau of Animal Industry on a holiday, or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime request the Bureau inspector in charge to furnish inspection, quarantine, or certification service during such overtime period and shall pay the Secretary of Agriculture therefor at the rate of \$2.40 per man hour for service so furnished: *Provided*, That a minimum charge of \$2.40 shall be made for any such service rendered. It will be administratively determined from time to time which days constitute holidays.

The rates prescribed herein shall also be applicable to overtime work heretofore furnished pursuant to this statute under any contract or other arrangement.

The purpose of this amendment is to establish a uniform hourly rate of payment for all overtime services furnished in accordance with the Act of August 28, 1950. Determination of the costs of such overtime inspection depends entirely upon facts within the knowledge of the Department of Agriculture. It is to the benefit of those who require such overtime service, as well as the public generally, that this amendment be made effective at the earliest practicable date. Accordingly, pursuant to the provisions of section 4 of the Administrative Procedure Act (60 Stat. 238), it is found upon good cause that notice and public procedure on this amendment are impracticable, unnecessary, and contrary to the public interest, and good cause is found for making this amendment effective less than 30 days after publication.

(Pub. Law 735, 81st Cong.)

Effective date. The foregoing amendment shall be effective upon publication in the **FEDERAL REGISTER**.

Done at Washington, D. C., this 1st day of May 1951.

[SEAL]

CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 51-5228; Filed, May 4, 1951;
8:51 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Bureau of Animal Industry, Department of Agriculture

Subchapter I—Overtime Services

PART 165—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

OVERTIME, NIGHT, AND HOLIDAY INSPECTION AND QUARANTINE ACTIVITIES AT BORDER, COASTAL, AND AIR PORTS

Pursuant to the authority vested in the Secretary of Agriculture by Public Law 735, 81st Congress, approved August 28, 1950, to pay employees of the Department performing inspection, certification or quarantine services relating to imports into and exports from the United States for all overtime, night, or holiday work performed by them and to accept reimbursement for such payment from persons for whom such work is performed, Chapter I of Title 9 of the Code of Federal Regulations is amended by adding thereto the following new Subchapter I and Part 165.

§ 165.1 Overtime work at border ports, seaports, and airports. Any person, firm, or corporation having ownership, custody or control of animals, animal by-products, or other commodities subject

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 3, Amdt. 12]

PART 60—AIR TRAFFIC RULES

STANDARD INSTRUMENT APPROACH PROCEDURES

Under sections 205 and 601 of the Civil Aeronautics Act of 1938, as amended, the Civil Aeronautics Board is empowered to delegate to the Administrator of Civil

*Aeronautics the authority to prescribe rules, regulations, and standards which promote safety of flight in air commerce, and the Administrator of Civil Aeronautics is empowered to make and amend such general or special rules, regula-

tions, and procedures as he deems necessary to exercise and perform his powers and duties under the act. Under § 60.46 of the Civil Air Regulations the Civil Aeronautics Board has authorized the Administrator of Civil Aeronautics to prescribe standard instrument approach procedures.

LOW FREQUENCY RANGE PROCEDURES

Acting pursuant to the foregoing statutes and regulations, standard instrument approach procedures were prescribed. Those procedures are hereby amended. This amendment is made effective without delay, in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required.

1. The low frequency range procedures prescribed in § 60.46-4 are amended to read in part:

Station; frequency; identification; class	Minimum initial approach altitude from the direction and radio fix indicated	Final approach range course	Procedure turn minimum at distances from radio range station	Station to airport	Ceiling and visibility minimums			If visual contact not established over airport at authorized landing minimums, or if landing not accomplished, remarks	
					Minimum altitude over range-final approach (ft.)	Magnetic bearing (deg.)	Field elevation (ft.)		
ALEXANDRIA, LA. 25 kc; A/F; S-BRAZ-DTV	NP—Minimum en route altitude SE—1,500' (Ihaton House Range) SW—1,500' (N crs Shreveport)	SE	10 mi.—1,300' E side SE crs 15 mi.—1,300' E side SE crs 20 mi.—1,500' E side SE crs 25 mi.—1,500' E side SE crs	900	311	5.7	88 (R) S A T	500 500 500 500 300	1.5 1.0 1.0 2.0 1.0
ATLANTA, GA. 266 kc; ATL; S-BRAZ-DTV	NE—2,800' (Spartanburg Range) NP—2,000' (Stone Mountain F.M.) SE—2,000' (Clayton Range F.M.) (final) SW—2,000' (Newell Range) NW—4,000' (Chattanooga Range) NW—2,500' (Smyrna F.M.)	SE	10 mi.—2,000' E side SE crs 15 mi.—2,000' E side SE crs 20 mi.—2,000' E side SE crs 25 mi.—2,000' E side SE crs	1,600	317	1.9	1,024 (R) S* A T	500 500 800 300	1.5 1.0 2.0 1.0
AUGUSTA, GA. Daniel Field 385 kc; AGS; S-BRAZ-DTV	N—1,900' (W crs Columbia) E—1,500' (Charleston Range) S—Minimum en route altitude W—2,300' (Atlanta Range)	S	10 mi.—1,600' E side S crs 15 mi.—1,600' E side S crs 20 mi.—1,600' E side S crs 25 mi.—1,600' E side S crs	1,100	46	2.1	427 (R) A T	600 500 300	1.5 1.0 1.0
BANGOR, MAINE Dow AFB 239 kc; BGR; S-BRAZ-DTV	NE—2,600' (8 crs Houlton) SE—Minimum en route altitude SW—2,300' (8 crs Augusta) NW—1,700' (S crs Millinocket) NW—1,300' (E. Corinth F.M.) (final)	NW	10 mi.—1,700' W side NW crs 15 mi.—2,000' W side NW crs 20 mi.—2,000' W side NW crs 25 mi.—2,000' W side NW crs	1,200	180	2.2	122 (R) A T	700 600 300	1.5 1.0 1.0
BATON ROUGE, LA. Harding Field 347 kc; BTR; BMLRZ-DTV	NE—Minimum en route altitude SE—1,600' (W crs New Orleans) SW—1,500' (Alexandria Range) NW—1,500' (Lafayette Rm.)	NW	10 mi.—1,100' W side NW crs 15 mi.—1,200' W side NW crs 20 mi.—1,200' W side NW crs 25 mi.—1,300' W side NW crs	700	125	3.4	70 (R) S A T	500 500 300	1.5 1.0 1.5
BILLINGS, MONT. Billings Airport 400 kc; BILL; S-BRAZ-DTV	NE—5,000' (Milne City Range) NW—4,500' (Libbie F.M.) (final) SE—8,000' (Sheridan Range) W—9,000' (Livingston Range) W—5,500' (Park City F.M.) N—8,000' (Forrest Grove Int.) N—8,000' (Lariva F.M.)	NE	10 mi.—5,000' N side NE crs 13 mi.—5,000' N side NE crs 20 mi.—5,000' N side NE crs 23 mi.—5,000' N side NE crs	4,500	266	1.3	3,612 (R) A T	500 500 300	1.5 1.0 1.0
COLUMBIA, S. C. Columbia Airport 27 kc; CAE; S-BRAZ-DTV	E—1,500' (SW crs Florence) SE—1,500' (N crs Charleston) W—1,800' (N crs Augusta) W—1,600' (SE crs Spartanburg) NW—Minimum en route altitude	E	10 mi.—1,500' N side E crs 15 mi.—1,500' N side E crs 20 mi.—1,500' N side E crs	1,200	268	7.3	244 (R) S A T	600 500 300	1.5 1.0 1.0
DAGGETT, CALIF. CAA Int. Field 365 kc; DAG; S-BRAZ-DTV	N—Minimum en route altitude E—9,000' (Needles Range) W—6,000' (Palm Springs Range)	W	10 mi.—6,000' N side W crs 15 mi.—6,000' N side W crs 20 mi.—6,000' N side W crs 25 mi.—6,000' N side W crs	3,900	76	0.0	1,927 (R) A T	2,000 2,000 400	4.0 2,000 4.0
GREAT FALLS, MONT. Great Falls Airport 317 kc; GTF; S-BRAZ-DTV	NE—Minimum en route altitude E—9,000' (Lewistown Range) E—5,500' (Belt F.M.) SW—8,500' (N crs Helena) SW—5,500' (Cascade F.M.) SW—4,200' (Cascade F.M.) (final) NW—6,500' (Cut Bank Range)	NW	10 mi.—5,500' S side SW crs 15 mi.—5,500' S side SW crs 20 mi.—5,500' S side SW crs 25 mi.—7,500' S side SW crs	4,200	18	1.5	3,671 (R) S* A T	500 500 300	1.5 1.0 1.0

If visual contact not established over airport at authorized landing minimums, or if landing not accomplished, remarks

Climb to 1,500' on NW crs.

Climb to 1,500' on NW crs.
Climb to 2,500' and proceed to the Campbellton range via NW crs of Atlanta; or alternate procedure (when directed by ATC), climb to 3,000' on NW crs of Atlanta.

*Runway 33.

Climb to 1,900' on N crs.

Climb to 1,900' on N crs.

Climb to 1,900' on N crs.

Climb to 2,500' on SE crs.

Climb to 2,500' on SE crs.

Climb to 2,500' and proceed to the Campbellton range via NW crs of Atlanta; or alternate procedure (when directed by ATC), climb to 3,000' on NW crs of Atlanta.

*Runway 33.

Climb to 1,900' on N crs.

Climb to 1,900' on N crs.

Climb to 5,500' on NE crs.

*Runway 2.

RULES AND REGULATIONS

LOW FREQUENCY RANGE PROCEDURES—Continued

Station; frequency, identification; class	Minimum initial approach altitude from the direction and radio fix indicated	Final approach range course	Procedure turn minimum at distances from radio range station	Minimum altitude or range—final approach (ft.)	Magnetic bearing (deg.)	Distance (mi.)	Field elevation (ft.) *	Climb and visibility minimums		
								Day	Night	Ceiling (ft.)
LAWSON (Columbus), G.A. Lawson AFB; LOU; 335 kc; LSF, MRWZ	NE—3,000' (SW crs Campbellton) SE—2,400' (Westwood FM) (final) SW—3,000' (NW crs Dothan) NW—3,000' (E crs Maxwell)	SW	10 mi.—2,000' E side SW crs 15 mi.—2,000' E side SW crs 20 mi.—2,000' E side SW crs 25 mi.—2,000' E side SW crs	1,000	22	3.3	232	R A T	700 800 300	2.0 2.0 1.0
LOUISVILLE, KY. Standiford Field 359 kc; LOU; SBMRLZ-DTV	N—Minimum en route altitude E—2,400' (N crs Lexington V.A.R.) E—1,500' (Eastwood FM) (final) S—2,300' (N crs Bowling Green) S—2,000' (Shepherdsville FM) W—2,100' (Lanesville Int.)	E	10 mi.—2,000' S side E crs 15 mi.—2,400' S side E crs 20 mi.—2,400' S side E crs 25 mi.—2,400' S side E crs	1,500	242	6.1	497	R (R) S* A T	600 500 500 800 300	1.5 1.0 1.5 2.0 1.0
Bowman Field	N—Minimum en route altitude E—2,400' (N crs Lexington V.A.R.) E—1,500' (Eastwood FM) (final) S—2,300' (N crs Bowling Green) S—2,000' (Shepherdsville FM) W—2,100' (Lanesville Int.)	E	10 mi.—2,000' S side E crs 15 mi.—2,400' S side E crs 20 mi.—2,400' S side E crs 25 mi.—2,400' S side E crs	1,500	282	1.5	549	R (R) A T	600 500 300	1.5 1.0 2.0
McCHORD (Tacoma), WASH. McChord AFB 272 kc; TCM; SBMRAZ	E—8,000' (W crs Ellensburg) S—5,000' (E crs Toledo) W—Minimum en route altitude W—2,000' (E crs Shelton) N—3,000' (NW crs Seattle) N—2,000' (NE crs Shelton)	S	10 mi.—4,000' *W side S crs 15 mi.—NA 20 mi.—NA 25 mi.—NA	2,600	238	7.2	286	R A T	600 800 300	2.0 2.0 1.0
MILLVILLE, N.J. Millville Airport 365 kc; MIV; SRAZ-DTV	NE—1,500' (SE crs North Philadelphia) SE—1,500' (SW crs Atlantic City V.A.R.) SW—1,500' (E crs Baltimore) NW—1,500' (W crs Philadelphia) NW—1,000' (E crs Wilmington)	NW	10 mi.—1,600' W side NW crs 15 mi.—1,600' W side NW crs 20 mi.—1,600' W side NW crs 25 mi.—1,600' W side NW crs	1,100	144	4.3	88	R (R) A T	500 500 300	1.5 1.0 2.0
MONROE, I.A. Selman Field 339 kc; MILT; SBMRLZ-DTV	NE—Minimum en route altitude E—1,500' (Jackson Range) SW—Minimum en route altitude W—1,500' (Shreveport Range)	SW	10 mi.—1,200' S side SW crs 15 mi.—1,200' S side SW crs 20 mi.—1,200' S side SW crs 25 mi.—1,200' S side SW crs	700	25	2.8	79	R (R) S* A T	500 500 300	1.5 1.0 2.0
N O R T H P L A T T E, NEBR. Lee Bird Field; 236 kc; LBFT; SRAZ-DTV	N—Minimum en route altitude E—4,200' (Grand Island Range) E—4,200' (E crs Hayes Center) W—5,000' (SE crs Scottsbluff) W—4,300' (N crs Hayes Center)	S	10 mi.—4,200' E side S crs 15 mi.—4,200' E side S crs 20 mi.—4,200' E side S crs 25 mi.—4,200' E side S crs	3,700	322	2.2	2,779	R (R) A T	500 500 300	1.5 1.0 2.0
OMAHA, NEBR. Omaha Airport 330 kc; OMA; SBRAZ-DTV	N—2,500' (Slidell City Range) N—1,800' (California FM) (final) E—2,500' (Des Moines Range) SE—2,700' (E crs Lincoln) (Glenwood Int.) W—2,700' (N crs Lincoln) (Weston Int.)	N	10 mi.—2,300' W side N crs 15 mi.—2,300' W side N crs 20 mi.—2,300' W side N crs 25 mi.—2,300' W side N crs	1,800	139	5.1	982	R (R) S* A T	500 500 800 300	1.5 1.0 2.0 1.0

If visual contact not established over airport, at authorized landing minimums, or if landing not accomplished, remarks

Caution: 1.40° msl radio tower for further instructions.
*No approach on SE crs due to Fort Benning Danger Area.
SHUTTER: To 3,000' on SW crs within 25 miles.

Caution: 1.40° msl radio tower on N side of X crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Y crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Z crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Y crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Z crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Z crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

Caution: 1.40° msl radio tower on N side of Z crs, 12 mi. from range, 1,032 msl radio tower on S side of E crs, 6.5 mi. from range.
Runway 24.

LOW FREQUENCY RANGE PROCEDURES—Continued

Station; frequency; identifica- tion; class	Minimum initial approach altitude from the direction and radio fix indicated	Final approach range course	Procedure turn minimum at dis- tances from radio range station	Minimum altitude over range— final approach (ft.)	Station to airport	Field elevation (ft.)	Ceiling and visibility minimums					
							Magnetic bearing (deg.)	Distance (mi.)	Ceiling (ft.)	Visibility (mi.)		
PERRIN (Sherman), TEX. Perrin AFB 335 KHz; PNX; SMRAZ	NE—Minimum en route altitude SW—3,000' (E ers Fort Worth) NW—3,000' (N ers Dallas)	SE	10 mi.—2,500' E side SE cts 15 mi.—2,500' E side SE cts 20 mi.—2,500' E side SE cts 25 mi.—2,500' E side SE cts	1,700	314	3.7	732	R A T	800 800 300	1.0 2.0 1.0	600 800 300	2.0 2.0 2.0
PIERRE, S. DAK. Pierre Airport 347 KHz; PIR; SBRAZ-DTV	N—3,300' (Bismarck Range) E—3,300' (SW ers Huron) (Virg Int.) S—Minimum en route altitude W—3,300' (Philip Rbh)	E	10 mi.—2,000' N side E cts 15 mi.—3,100' N side E cts 20 mi.—3,100' N side E cts 25 mi.—3,100' N side E cts	2,400	240	3.5	1,742	R A T	500 800 300	1.5 2.0 1.0	500 800 300	2.0 2.5 1.0
POCATELLO, IDAHO Philips Field 257 KHz; PIII; BMRLZ-DTV	N—Minimum en route altitude E—11,000' (Mafel City Range) S—11,000' (N ers Burley) W—7,000' (N ers Burley)	W	10 mi.—6,500' *N side W cts 15 mi.—6,500' *N side W cts 20 mi.—6,500' *N side W cts 25 mi.—6,500' *N side W cts	4,940	326	0.5	4,446	R A T	600 800 300	1.5 2.0 1.0	600 800 300	2.0 2.0 1.0
POPE (Pt. Bragg), N. C. Pope AFB 335 KHz; FTB; SBRAZ	NE—1,900' (S ers Raleigh) S—1,900' (S ers Raleigh) SW—Minimum en route altitude N—Minimum en route altitude	S	10 mi.—1,500' E side S cts 15 mi.—1,500' E side S cts 20 mi.—1,500' E side S cts 25 mi.—1,500' E side S cts	1,600	355	2.3	220	R A T	600 800 300	1.0 2.0 1.0	600 800 300	2.0 2.0 1.0
RAPID CITY, S. DAK. Rapid City Airport 221 KHz; RAP; SBRAZ-DTV	N—Minimum en route altitude E—4,400' (Philip Rbh or VOR) S—5,600' (NE ers Scottsdhuf) W—3,000' (SE ers Sherldan)	E	10 mi.—4,400' N side E cts 15 mi.—4,400' N side E cts 20 mi.—4,400' N side E cts 25 mi.—4,400' N side E cts	3,900	*91	1.7	3,172	R A T	700 800 300	1.5 2.0 1.0	700 800 300	1.5 2.0 1.0
UTICA, N. Y. Ostiglia County Airport 339 KHz; UCA; BMRLZ-DIV	NE—Minimum en route altitude SE—4,000' (S ers Syracuse) NW—3,000' (N ers Syracuse)	NE	10 mi.—3,000' N side NE cts 15 mi.—3,000' N side NE cts 20 mi.—NA 25 mi.—NA	2,300	218	3.6	736	R A T	600 800 300	1.5 2.0 1.0	600 800 300	1.5 2.0 1.0
2. The automatic direction finding procedures prescribed in § 60.46-7 are amended to read in part:												
AUTOMATIC DIRECTION FINDING PROCEDURES												
Station; frequency; identifica- tion; class	Initial approach to station			Final ap- proach track; degrees inflow/out- bound	Minim altitude over sta- tion on final ap- proach (ft.)	Distanc from sta- tion to approach end of runway (mi.)	Field elevation (ft.)	Minimums				
To—	From—	Mag- netic course (deg.)	Dis- tance (mi.)	Minim altitude (ft.)				Ceiling (ft.)	Vis- ibility (mi.)			
NIAGARA FALLS, N. Y. Niagara Falls Airport 231 KHz; GF; LOM	Buffalo Range Wolcottsville FM Int. SE ers Toronto and 223° bearing on LOM	LOM LOM LOM	338 286 223	12.2 13.9 4.0	2,000 2,000 2,000	278 10 mi.—2,000' N side track, 15 mi.—2,000' N side track, 20 mi.—2,000' N side track, 25 mi.—2,000' N side track	1,800	4.6 T T	500 500 300	1.0 1.0 1.0		
OPFUTT (Omaha), NEBR. Omaha AFB 256 KHz OFF; MHW	Omaha Range Glenwood FM Weeping Water Rba	Rbn Rbn Rbn	165 209 20	18.0 12.9 20.0	2,700 2,500 2,500	30 10 mi.—2,500' S side track 15 mi.—2,500' S side track 20 mi.—2,500' S side track 25 mi.—2,500' S side track	2,000	345°, 0.26 1,049 R A A T T	500 500 1,000 1,000 800	1.5 2.0 1.5 2.0 1.0		

RULES AND REGULATIONS

AUTOMATIC DIRECTION FINDING PROCEDURES—Continued

Station; frequency; identified; station; class	Initial approach to station				Final approach track; degrees inbound; out- bound	Procedure turn minimum at distances from station	Minimum altitude over sta- tion to final ap- proach (ft.)	Minimums			
	From—	To—	Magni- tude course (deg.)	Dis- tance (mi.)				Ceiling (ft.)	Visi- bility (mi.)		
OKLAHOMA CITY, OKLA. Will Rogers Field (Procedure No. 1— using Tulsa Rwy) 311 kg, TWO; MHW	Int. N crs Oklahoma City and Rbn W crs Tinker (final)	Rbn	152	2.8	1,900	170 330	10 mi.—2,300' W side track 15 mi.—2,300' W side track 20 mi.—2,300' W side track 25 mi.—2,300' W side track	4,54	1,283	R S* A T	
	Int. E crs Oklahoma City and Rbn S crs Tinker	Rbn	279	13.3	2,700						
Oklahoma City Rng	Rbn	15	5.2	2,400							
Mustang FM	Rbn	52	11.6	2,400							
ILS LOM	Rbn	350	10.0	2,500							
PITTSBURGH, PA. Allegheny Co. Airport (Using McKeesport Rwy) 287 kg, MKP; MHW	Pittsburgh Range Int. SE crs Pittsburgh and NE crs Morgantown	Rbn	92	9.8	2,600	275 95	10 mi.—2,600' N side track 15 mi.—2,600' N side track 20 mi.—2,600' N side track 25 mi.—2,600' N side track	2,600	6.3	1,252	R (R) S* A T
New Alexandria FM	Rbn	263	21.2	2,600							
SAGINAW, MICH. Tri-Cities Airport 212 kg, SGW; BMH-TV	Flint Rbn Gladwin Rbn Lansing Range	Rbn	340	43	*2,000	170 350	10 mi.—2,000' W side track 15 mi.—2,000' W side track 20 mi.—2,000' W side track 25 mi.—2,000' W side track	1,160	0	667	R (R) A T
SANTA FE, N. MEX. Santa Fe Airport (New) 206 kg, SAF; BMH-DTV	Las Vegas Range Otto Range	Rbn	258	51.5	12,500	56 235	10 mi.—8,200' S side track 15 mi.—8,200' S side track 20 mi.—NA 25 mi.—NA	7,700	0	6,344	R (R) A T *
	Rbn	340	38.0	10,000							

If visual contact not established at authorized landing minimums, or if landing not accomplished; remarks

Climb to 2,300' on track of 170° within 25 mi. of Tulsa Rwy.
Runway 17.

Climb to 2,500' on track of 170° within 25 mi. of Tulsa Rwy.
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3. The instrument landing system procedures prescribed in § 60.49-9 are amended to read in part:

INSTRUMENT LANDING SYSTEM PROCEDURES

Saturday, May 5, 1951

FEDERAL REGISTER

3983

Transition to ILS												Minimums	
From—	To—	Magnetic course (degrees)	Magnetic range (miles)	Min. altitude (ft.)	Min. altitude over markers (ft.)	Distance from markers to approach end of runway (miles)	Field elevation (ft.)	Outer	Middle	Outer	Middle	Ceiling (ft.)	Visibility (miles)
ILS location and range from which initial approach to ILS shall be made.													
ATLANTA, GA. Atlanta Airport Freq 109.9 mc Ident. ATL	Atlanta Range Campbellton Range Int. E ctrs ILS and NE ers Atlanta	Outer marker Outer marker	284 6.9 2,500 94 8.8 2,500	W 2,450—S side W crs 88 268	2,450	1,320	4,70	.62	1,024	R S* S A T	500 400 800 300	1.5 3/4 2.0 1.0	
Madras FM	Outer marker	288 9.5 2,500											
Walnut Int.	Outer marker	33 19.0 2,500											
Atlanta NAS Range	Outer marker	208 18.0 3,000											
Smyrna FM	Outer marker	171 18.0 2,500											
BOSTON, MASS. Hanson Field Freq. 108.3 mc Ident. BID	LOM Int. SW ers Boston and N ers Providence	302 21.5 1,700 12 27.0 1,300	W 1,000'—N side 112 292	1,600	1,520	390	4,50	.69	135	R (R) S* A T	500 500 400 800 300	1.5 3/4 2.0 1.0	
Int. NE ers Westover and W ers Boston	LOM	116 33.0 3,000											
Int. W ers Boston and N ers Providence	LOM	311 7.0 1,600											
BILLINGS, MONT. Billings Airport Freq. 110.3 mc Ident. BILL	E ctrs ILS (out- bound)	73 *	5,000	E 5,000'—N side 233 73	5,000	4,600	3,720	4,30	.60	3,612	R (R) S* A T	500 500 400 800 300	1.5 2.0 1.0 1.0 1.0
Nibbe FM	E ctrs ILS (in- bound)	215 17 5,000											
Park City FM	W ers ILS (in- bound)	62 5 5,500											
BOSTON, MASS. Logan Airport Freq. 109.9 mc Ident. BOS	LOM Int. SW ers Boston and N ers Providence	217 8.7 1,800 85 14.0 1,800	SW 1,800'—S side 35 215	1,800	1,775	220	5,67	.06	10	R (R) S* A T	600 500 400 800 300	1.5 3/4 2.0 1.0 1.0	
Int. W ers Boston and N ers Providence	LOM	150 16.3 1,800											
Int. E ctrs Boston and NE ctrs Squantum	LOM	267 19.0 1,800											
CLEVELAND, OHIO Cleveland Airport Freq. 109.9 mc Ident. CLE	Cleveland Range Elyria FM Avon Lake FM	224 4.3 2,100 135 8.4 2,100 171 9.7 2,100	SW 2,100'—S side 54 234	2,100	2,070	1,020	4,50	.71	738	R (R) S* A T	500 400 800 300	1.5 3/4 2.0 1.0	
North Royalton FM	Outer marker	303 10.9 2,000											
Int. NW ers Akron and SW ers ILS	Glide path in- terception	54 8.0 2,200											

If visual contact not established, at authorized banding minimums, or if landing not accomplished; remarks

Turn right, climb to 2,000' on SE crs of Atlanta and proceed to Walnut Int., or alternate procedure (when directed by ATCO) climb to 3,000' on back course of ILS, then proceed to Walnut Int. • Runway 9R.

Turn left, climb to 1,600' on W crs of ILS within 15 miles. • Runway 1L. #Within 10 mi.; 20 mi. 2,000', 25 mi. 3,000'.

Turn right, climb to 2,000' on W crs of ILS within 15 miles. • Runway 1L. #Runway 25. *Night minimums.

SHUTTLE: On E ctrs ILS between LOM and 10 mi. E., All turns on N side of E crs. Min. alt.—5,000'. *Night minimums.

#Runway 25. CAUTION: Point of touch-down runway from actual beginning of pavement to allow clearance of ship channel.

Climb to 2,600' on E crs of Cleveland.

#Runway 5L.

RULES AND REGULATIONS

INSTRUMENT LANDING SYSTEM PROCEDURES—Continued

INSTRUMENT LANDING SYSTEM PROCEDURES—Continued

		Transition to ILS			Final ILS approach course, descends inbound, out-bound			Procedure turn minimum on ILS			Minimum			
From—	To—	Magnetic course (deg.)	Distance (mi.)	Minimum altitude (ft.)	Outer	Middle	Outer	Middle	Outer	Middle	Field elevation (ft.)	Ceiling (ft.)	Visibility (mi.)	
KANSAS CITY VOR Int. E of Topeka VAR and NW Kansas City (Godsey Int.)	Outer marker Ncrs ILS	142	1.7	2,500	N 173 353	2,500—E side N crs	2,500	2,500	1,505 (799) boundary marker	6,35	2,60	744 (R) S# A T	700 500 400 300	1.5 1.0 2.0 1.0
Kansas City Range	Outer marker Ncrs ILS	13	4.2	2,500										
Linkville FM	Ncrs ILS	95	6.2	2,500										
Liberty FM and Rn	Ncrs ILS	232	12.3	2,500										
KANSAS CITY, MO. Kansas City Airport Freq. 109.9 mc Ident. MKC														
Int. E of Topeka VAR and NW Kansas City (Godsey Int.)														
Kansas City Range	Outer marker Ncrs ILS	13	4.2	2,500										
Linkville FM	Ncrs ILS	95	6.2	2,500										
Liberty FM and Rn	Ncrs ILS	232	12.3	2,500										
Fairfax Field (Kansas City, Kans.)														
Kansas City VOR Int. E of Topeka VAR and NW Kansas City (Godsey Int.)	Outer marker Ncrs ILS	142	1.7	2,500	N 173 353	2,500—E side N crs	2,500	2,500	1,505 (From MM to nearest edge of field)	18° .9	746 (R) S# A T	700 500 400 300	1.5 1.0 2.0 1.0	
Kansas City Range	Outer marker Ncrs ILS	13	4.2	2,500										
Linkville FM	Ncrs ILS	95	6.2	2,500										
Liberty FM and Rn	Ncrs ILS	232	12.3	2,500										

Fairfax Field
(Kansas City, Kans.)

If visual contact not established at authorized landing minimums, or if landing not accomplished; remarks

If visual contact within 2 mi. after passing MM, immediately execute right climbing turn to 2,500' intercept ADP track of 275° outbound from Kansas City range, proceed to and hold at Fairmount Int., or alternate procedure (when directed by ATC), immediately climb to 2,200' on SW crs of Kansas City.

CAUTION: 902 msl cracking plant and 869 msl stack—

*Take-offs to S and SW, when weather is below 1,000', will assume heading of at least 210° as soon as practicable after take-off and maintain heading until reaching 2,500' prior to making left turn.

#Runway 17.

Immediately execute right climbing turn to 2,500', intercept ADP track of 275° outbound from Kansas City range, proceed to and hold at Fairmount Int., or alternate procedure (when directed by ATC), immediately climb to 2,200' on SW crs of Kansas City.

CAUTION: 902 msl cracking plant and 869 msl stack—

0.5 mi. ESE of approach end of runway 35, 1,650' msl tower—4.2 mi. SSE of airport, 1,430' msl obstructions located 2.5 mi. SE of airport, adhere strictly to pull-up procedure.

RULES AND REGULATIONS

These procedures shall become effective upon publication in the FEDERAL REGISTER.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply see. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

[SEAL]

DONALD W. NYROP,
Administrator of
Civil Aeronautics.

[F. R. Doc. 51-5167; Filed, May 4, 1951;
8:45 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

Subchapter B—Claims and Accounts

PART 538—ALLOTMENTS OF PAY

CLASS Q ALLOTMENTS

Paragraph (i) is added to § 538.1, paragraph (c) is added to § 538.3, subparagraph (3) is added to paragraph (a) of § 538.6, and a new § 538.13 is added to Part 538, as follows:

§ 538.1 Definitions. * * *

(i) *Class Q allotment.* An allotment made to provide assistance for dependents of enlisted members.

§ 538.3 Eligible allottees and authorized purposes. * * *

(c) *Class Q allotment.* (1) The following categories of dependents will be designated as allottees for class Q allotments:

(i) Wife or children.

(ii) Child or children of former wife, divorced, who are not in custody of service member.

(iii) Parent or parents.

(2) Separate allotments will be made to or on behalf of the above categories of dependents but will not be required to be made to each of the dependents in the same category.

§ 538.6 Allotment offices—(a) Active duty personnel. * * *

(3) *Class Q allotments.* Class Q allotments are processed by the Class Q Allotment Division, Army Finance Center, Building 205, St. Louis 20, Missouri.

* * * * *

§ 538.13 *Class Q allotment—(a) Requirements—(1) Amount.* On and after November 1, 1950, before an enlisted member is entitled to credit for basic allowance for quarters for dependents he must have in effect an allotment of pay to be known as class Q to his dependent or dependents in an amount equal to the applicable rate for basic allowance for quarters plus:

- (i) \$40, if service member is in grade E-1, E-2, or E-3;
- (ii) \$60, if service member is in grade E-4, or E-5; or
- (iii) \$80, if service member is in grade E-6 or E-7.

The allotment required for any month shall be based on the lowest rate of basic allowance for quarters to which the member is entitled and the lowest pay grade in which the member is serving during such month; however, no change in allotment will be made for such month to meet this requirement. Therefore, if

member is promoted or demoted or acquires or loses a dependent after first day of month, he will be credited with applicable amount for basic allowance for quarters for such period, but no change in allotment is required for that month; however, a new class Q allotment will be required, effective the first of the following month in applicable amount. Any necessary adjustment will be made on the pay record. Whenever change in grade or dependency occurs which will affect amount of class Q allotment or allotments, forms necessary to cancel old allotment and initiate new allotment (effective first day of following month) will be submitted. If a member acquires or loses a dependent on the first day of the month or is promoted or demoted effective on the first day of the month, or both, the applicable increase or decrease in the minimum amount required to be allotted must be effective for such month instead of the first of the succeeding month. The total class Q allotment or allotments of any Army member must equal the total amount required to be established. The total class Q allotment or allotments of an Air Force member must not be less than the amount of class Q allotment or allotments required to be established, but may exceed such figure.

(2) *Court order or written agreement.* In those cases where the member's dependency obligations have been fixed by court order or other written agreement, the amount required to be allotted may be reduced to an amount not less than the basic allowance for quarters or the amount fixed in such court order or agreement, whichever amount is greater.

(3) *Months not required.* No class Q allotment or allotments will be required for the calendar month:

(i) In which the member enters on active duty in a pay status if the allotment is effective from the first day of the following month;

(ii) In which such member is released from active duty or is discharged if not immediately reenlisted (class Q allotment will be discontinued the end of the month preceding separation; however, should there be insufficient time for WD AGO Form 30-S (Allotment Discontinuance) to reach the Army Finance Center by the 20th of the month, amount of class Q allotment will be debited on the military pay record and WD AGO Form 30-S will be prepared to discontinue allotment at end of month in which separation occurs);

(iii) In which such member is assigned Government quarters for himself and his dependents or assignment of such quarters is terminated;

(iv) In which dependency ceases;

(v) In which dependency commences if the allotment is effective from the first day of the following month;

(vi) In which death occurred, in the event of death of the service member;

(b) *Application by or on behalf of dependent.* (1) The question of whether or not an enlisted member desires to claim the basic allowance for quarters for his dependent or dependents generally should be resolved by such enlisted member. However, the Commanding

General, Army Finance Center, may authorize and direct the payment of the basic allowance for quarters for dependents and the establishment and payment of the class Q allotment or allotments as he shall determine to be in conformity with these regulations for any enlisted member who does not claim such allowance.

(2) (i) Upon application by or on behalf of any dependent of an enlisted member, the enlisted member will be advised by his immediate commanding officer that an application has been received by or on behalf of his dependent or dependents and the enlisted member will be requested to initiate a class Q allotment to provide for the support of his dependent or dependents. The enlisted member also will be advised that the Secretary of the service concerned has the authority to make such class Q allotments for the support of his dependents if he does not do so. The commanding officer will notify the Commanding General, Army Finance Center, of the circumstances, giving information such as a statement that the enlisted member refuses to initiate the required class Q allotment, a statement of the reason given by the enlisted member for not authorizing the class Q allotment, or any pertinent information regarding the situation. The Commanding General, Army Finance Center, after assuring himself that the application by or on behalf of the dependent of the enlisted member is a valid application, will initiate a Form 234, and will validate the allotment authorization in the space ordinarily provided for the enlisted member's signature. Form 234, with appropriate letter of explanation and statement of credit for basic allowance for quarters to be entered on the military pay record, will be forwarded to the disbursing office for processing through the commanding officer of the enlisted member concerned. The enlisted member will not be permitted to modify or stop a class Q allotment which has been established by the Commanding General, Army Finance Center, but he may furnish such information as he desires if he wishes to contest the establishment and payment of the class Q allotment. The information of the service member, over his signature, together with any additional information the commanding officer may have, will be submitted to the Dependency Division, Army Finance Center. The Commanding General, Army Finance Center, then will take such action as may be necessary to stop, modify, or restrict the class Q allotments.

(ii) The procedure prescribed in this subparagraph does not apply to dependents of enlisted members who are missing, missing in action, interned in a neutral country, captured by an enemy, beleaguered, or besieged.

(3) Upon application by or on behalf of any dependent of an enlisted member who has in effect a class Q allotment, the Commanding General, Army Finance Center, will modify such class Q allotments as may be necessary under this section and will follow the procedure outlined in this paragraph.

[C3, AR 35-1900, April 16, 1951, and SR 35-1465-15, March 13, 1951] (Sec. 302, 63 Stat. 812, as amended; 37 U. S. C. 252)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. Army,
The Adjutant General.

[F. R. Doc. 51-5233; Filed, May 4, 1951;
8:52 a. m.]

Subchapter G—Procurement

ARMY PROCUREMENT PROCEDURE

The Army Procurement Procedure, hereby issued as Parts 590-603 of this chapter by the Department of the Army, prescribes policies, methods, and standards governing the procurement of supplies and services for the Army Establishment under the Armed Services Procurement Regulation (Parts 400-414 of Chapter IV of this title), and the Armed Services Procurement Act of 1947. Specifically, the Army Procurement Procedure implements, and is supplementary to, the Armed Services Procurement Regulation. Since the material published in the Regulation is not duplicated in the Procedure, both publications must be reviewed to obtain full coverage on any particular subject.

For those using this set of procurement rules, it must be borne in mind that in light of the magnitude of the Army's enlarged purchasing mission, it is highly imperative that procurement be accomplished swiftly, effectively, and to the best interests of the Government. Although the objectives of the procurement program must be expeditiously attained, economy and productive efficiency cannot be ignored. We are committed to obtain the maximum use of funds, and to secure the largest possible quantity of supplies of a requisite quality which can be purchased with those funds.

To avoid the dangers to free, competitive enterprise which may arise during a period of continuing mobilization, it is necessary for those involved in procurement to be watchful for factors which can be recommended for elimination because of any tendency to suppress competition unduly, create or strengthen monopolies, injure small business, or otherwise promote undue concentration of economic power. In furtherance of the small business policy, it is not only desirable but essential that an increasing proportion of Army contracts be placed with small firms, due to the necessity of using all available resources. To this end, restrictions which might prevent small business participation will be eliminated from proposed procurements to the maximum extent possible.

In issuing this Army Procurement Procedure, it is emphasized that each individual having procurement responsibility or authority is responsible for properly safeguarding the interests of the United States, and that each and every procurement action must be above reproach and not subject to unfavorable criticism.

[SEAL] EDWARD F. WITSELL,
Major General, U. S. Army,
The Adjutant General.

Part	Sec.	
590. General Provisions.	590.452	Authority of representatives.
591. Procurement by Formal Advertising.	590.453	General responsibility of Contracting Officers.
592. Procurement by Negotiation.	590.454	Delegation of authority.
593. Coordinated Procurement.	590.455	Standards of conduct.
594. Interdepartmental Procurement.	590.456	Responsibility for insuring the availability of funds.
595. Foreign Purchases.		SUBPART E—CONSTRUCTION
596. Contract Clauses and Forms.	590.500	Scope of subpart.
597. Termination.	590.501	New construction.
598. Patents and Copyrights.	590.502	Responsibility.
599. Bonds and Insurance.	590.503	Authorization.
600. Federal, State and Local Taxes.	590.504	Formal advertising.
601. Labor.		SUBPART F—ADMINISTRATIVE PROCEDURES
602. Government Property.	590.600	Scope of subpart.
603. Inspection and Acceptance.	590.601	Documentary evidence of purchases.
	590.602	Execution of contracts; requirements.
	590.603	Numbering of contractual documents.
	590.603-1	Purpose.
	590.603-2	Scope.
	590.603-3	Contracts required to be numbered.
	590.603-4	System of numbering.
	590.603-5	Determination of numbering agency.
	590.603-6	Delivery orders.
	590.603-7	Assignment, cancellation, or alteration of contract number.
	590.603-8	Miscellaneous provisions.
	590.604	Approval of awards of contracts.
	590.604-1	Personal or professional services.
	590.604-2	Leases of Government property.
	590.604-3	Construction and rehabilitation of installations.
	590.604-4	Architect-Engineer contracts.
	590.604-5	Research and development contracts.
	590.604-6	Utility service contracts.
	590.604-7	Negotiated contracts in general.
	590.604-8	Major oversea commands.
	590.604-9	Modifications of contracts.
	590.604-10	Exigency and competition impracticable.
	590.604-11	Contract review.
	590.604-12	Approval clause.
	590.605	Information to be furnished when requesting approval of contracts or awards.
	590.606	Distribution of contracts.
	590.606-1	Definitions.
	590.606-2	Secret and confidential contracts.
	590.606-3	Numbered contracts.
	590.606-4	Unnumbered contracts.
	590.606-5	Bread contracts.
	590.606-6	Supplemental agreements and change orders.
	590.606-7	Purchases under contracts of other military departments and other government agencies.
	590.606-8	Distribution of procurement contracts to the Army Audit Agency.
	590.607	Audits of procurement contracts by the Army Audit Agency.
	590.607-1	Cost-reimbursement type contracts.
	590.607-2	Fixed-price contracts.
	590.607-3	General.
	590.608	Contractor's Statement of Contingent or Other Fees.
	590.608-1	Contracts subject to §§ 590.608 through 590.608-9.
	590.608-2	Form.
	590.608-3	Covenant Against Contingent Fees.
	590.608-4	Procurement and disposition by formal advertising.
	590.608-5	Procurement or disposition by negotiation.
	590.608-6	Statement instead of form.
	590.608-7	Authority of Head of a Procuring Activity.
	590.608-8	Preservation of representations and completed forms.
	590.608-9	Contracts in foreign countries.

RULES AND REGULATIONS

SUBPART G—SMALL PURCHASES PROCEDURE

Sec.	
590.700	Scope of subpart.
590.701	Definition.
590.702	Formal advertising.
590.703	Negotiation.
590.704	Methods of consummating small purchases by negotiation.
590.705	Order and Voucher for Purchase of Supplies or Services Other Than Personal (DA AGO Form 383).
590.705-1	Approval of the Comptroller General.
590.705-2	Use of Form 383 as a purchase order.
590.705-3	Use of Form 383 as a delivery order.
590.705-4	Use of Form 383 as a receiving and inspection report.
590.705-5	Use of Form 383 as a vendor's invoice.
590.705-6	Use of Form 383 as a voucher.
590.705-7	Use of Form 383b.
590.705-8	Use of Forms 383c and 383d.
590.705-9	Distribution of copies of Form 383.
590.705-10	General instructions.
590.705-11	Use of master mats.
590.705-12	Additional instructions.
590.705-13	Flow chart.

SUBPART H—PROCUREMENT ACTION REPORTING

590.800	Scope of subpart.
590.801	General.
590.802	Data to be included.
590.803	Forms.
590.804	Number of copies and routing.
590.805	Frequency and due dates.
590.806	Reporting activities.
590.807	Procurement actions to be reported.
590.808	Instructions for preparation of DD Form 350 (Individual Procurement Action Report).
590.809	Instructions for preparation of DA AGO Form 377 (Procurement Action Report Monthly Summary).

AUTHORITY: §§ 590.100 to 590.809 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

SUBPART A—INTRODUCTION

§ 590.100 Scope of part. Supplementary to, but consistent with part 400 of this title, this part sets forth (a) introductory information, (b) definitions, (c) basic policies, (d) procurement authority and responsibility, (e) general policies pertaining to military construction, (f) administrative procedures, (g) small purchases procedure, and (h) procurement action reporting.

§ 590.101 Purpose of Procedure. (Parts 590-603 of this chapter.) This Procedure, issued by the Department of the Army, pursuant to § 400.106 of this title, establishes for the Army Establishment uniform policies and procedures, consistent with and supplementary to Subchapter A, Chapter IV of this title (Armed Services Procurement Regulation), relating to the procurement of supplies and services under the authority of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.; 41 U. S. C. 151-161) or under other statutory authorization.

§ 590.102 Applicability of Procedure—(a) General applicability. This Procedure shall apply to all purchases and procurement contracts made by any Procuring Activity or Contracting Officer

of the Army Establishment which obligate appropriated funds (whether direct appropriations, allocations of appropriated funds, or contract authorizations) for the procurement of supplies and services and which are entered into as of a date on or after the effective date of this Procedure. This Procedure is supplementary to, and does not in any way supersede Subchapter A, Chapter IV of this title. This Procedure, however, does supersede (1) the Joint Procurement Regulations, originally issued November 1, 1947 (formerly published as Parts 801-811, Chapter VIII, Title 10 of the Code of Federal Regulations), and all amendments and additions made thereto through the issuance of procurement circulars, and (2) those portions of War Department Procurement Regulations in effect as of the date of this Procedure. This Procedure is not intended to cover the detailed implementing instructions of the respective Procuring Activities of the Army Establishment, all of which instructions may be prescribed as provided in § 590.107.

(b) Oversea commands, attachés, and foreign missions. Procurement outside the United States, its territories and possessions, and construction work outside the continental United States, including procurement effected under the jurisdiction of major oversea commanders, military attachés, and foreign missions, will be made in accordance with Subchapter A, Chapter IV of this title and this Procedure. Authority to deviate from prescribed provisions, in those specific cases which are inapplicable to procurement outside the United States, its territories and possessions, will be specifically set forth in this Procedure. If such authority is not contained herein, requests will be processed as prescribed in § 590.108.

(c) Combat areas. Major tactical commanders are authorized to waive the provisions of Subchapter A, Chapter IV of this title and this Procedure in the immediate areas engaged in active combat, subject to any instructions which may be issued by the Head of the Procuring Activity involved.

(d) Government and Relief in Occupied Areas. Subchapter A, Chapter IV of this title, and this Procedure are applicable to procurement in oversea areas for Government and Relief in Occupied Areas (GARIOA) chargeable to annual appropriations for such purposes. As stated in paragraph (b) of this section, authority to deviate will be expressly stated or request for authority to deviate will be processed as prescribed in § 590.108.

(e) Civil works, Corps of Engineers. Procurement of supplies and services for civil works, Corps of Engineers, will be made in accordance with Subchapter A, Chapter IV of this title, and, rather than this Procedure, such instructions as may be issued by the Chief of Engineers, pursuant to authority granted by the Secretary of the Army.

§ 590.103 Effective date. This Army Procurement Procedure (Parts 590-603 of this chapter) shall be effective on and after April 1, 1951.

§ 590.104 Arrangement of Procedure.

§ 590.104-1 General plan. This Procedure is intended to cover the general policies and procedures of the Army Establishment with respect to procurement; it implements and is supplementary to Subchapter A, Chapter IV of this title. The Procedure is divided into parts, each one of which deals with a separate aspect of procurement; each part is further subdivided into subparts and sections. In general, the parts, subparts, and sections conform to parallel provisions of Subchapter A, Chapter IV of this title. For example: § 590.104-1 is parallel to § 400.104-1 of Subchapter A, Chapter IV of this title. Additional subparts and sections have been added to cover subjects not treated in Subchapter A, Chapter IV of this title. Since material published in Subchapter A, Chapter IV of this title is not duplicated in this Procedure, both publications must be reviewed to obtain full coverage on most subjects.

§ 590.104-4 Citation. This Procedure shall be referred to as the Army Procurement Procedure (Parts 590-603 of this chapter) and cited by appropriate part or section of the Code of Federal Regulations.

§ 590.105 Amendment of Armed Services Procurement Regulation and Army Procurement Procedure. Recommendations for amendment of subchapter A, chapter IV of this title, or of this Procedure shall be submitted through channels to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch).

§ 590.106 Department procedures under Regulation. Subchapter A, chapter IV of this title (Armed Services Procurement Regulation) is a statement of uniform procurement policies which are in effect throughout the Department of Defense. Parts 590-603 of this chapter (Army Procurement Procedure) constitute an implementation of Subchapter A, Chapter IV of this title and sets forth uniform procurement policies and procedures which are in effect throughout the Army Establishment.

§ 590.107 Procuring Activity instructions under Army Procurement Procedure. The Head of any Procuring Activity may implement this Procedure by prescribing for his Activity (and for any field installations thereof) detailed procurement operating instructions which are not inconsistent with the Armed Services Procurement Regulation or the Army Procurement Procedure.

§ 590.108 Deviations from Armed Services Procurement Regulation and Army Procurement Procedure—(a) Deviations from Armed Services Procurement Regulation. Requests for deviations from the provisions of subchapter A, Chapter IV of this title shall be submitted to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch). The Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) is authorized to grant any such deviation in any individual case in which special circumstances

justify the deviation or deviations and will make a report thereof to the Departments of the Navy and Air Force. The Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) is authorized to grant class deviations from Armed Services Procurement Regulation with the concurrence of duly authorized representatives of the Departments of the Navy and Air Force.

(b) *Deviations from Army Procurement Procedure.* Requests for deviations from this Procedure shall be submitted to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch). Deviations from this Procedure will be made only by and with the approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

§ 590.109 Administration and interpretation. (a) The administration of subchapter A, chapter IV of this title and this Procedure will be the responsibility of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

(b) It will be the responsibility of the Heads of Procuring Activities to determine whether or not instructions and interpretations issued by their Activities in implementation of subchapter A, chapter IV of this title and this Procedure properly reflect and are consistent with the policies of the Department of Defense and the Department of the Army.

§ 590.110 Periodic report of purchases and contracts. Reports in connection with § 400.110 of this title will be made in accordance with the requirements of Subpart H of this part.

§ 590.111 Reports of suspected criminal conduct. Reports of possible violations of Federal criminal statutes in connection with procurement and related matters, including reports of possible fraud, will be made in accordance with the requirements of § 590.303.

§ 590.150 Distribution of Regulation and Procedure. Copies of the Armed Services Procurement Regulation or the Army Procurement Procedure are not available for free distribution to private firms or individuals; however, these publications may be purchased from the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., as printed in the FEDERAL REGISTER or in separate pamphlet form.

SUBPART B—DEFINITIONS OF TERMS

§ 590.201 Definitions. As used throughout Subchapter A, Chapter IV of this title and this Procedure, the following terms shall have the meanings set forth below.

§ 590.201-2 Secretary. The term "Secretary" means the Secretary of the Army, or the Under or Assistant Secretary of the Army responsible for procurement and industrial matters for the Army Establishment.

§ 590.201-5 Contracting Officer. The term "Contracting Officer," when used in Subchapter A, Chapter IV of this title,

and this Procedure is construed to include his duly appointed successor or authorized representative acting with the limits of his authority. (See §§ 590.402 and 590.450 through 590.453.)

§ 590.201-9 Sources of supplies—(a) Within the geographic limits of the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia, the term "sources of supplies" shall include only (1) manufacturers of or (2) regular dealers in the supplies to be procured, as defined in § 400.201-9 of this title.

(b) Outside the geographic limits of the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia, the term "sources of supplies" shall include (1) manufacturers, (2) regular dealers, as defined in § 400.201-9 of this title, and (3) intermediaries, provided such sources are not prohibited by local foreign law. An "intermediary" shall be deemed to be any one of the following:

(i) A person (or firm) who owns, operates or maintains a place of business, regularly engaged in performing certain services which directly or indirectly increase the value of the materials, supplies, articles, or equipment being procured (services to consist of such functions as the recovery from consignees and redistribution to manufacturers and producers of containers and packing materials; the receiving, storing, repacking, and reshipping of items being procured; the collection, consolidation, assembling, packing, and shipping of items being procured, etc.; and not the functions of mere soliciting of business, taking of orders, rendering assistance to manufacturers or producers by the preparation of receiving and payment documents, arranging for transportation facilities, etc.).

(ii) A person (or firm) who owns, operates or maintains a place of business, regularly engaged in the importing and exporting business, provided that the items procured are not being imported from within the geographical limits of the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, and the District of Columbia.

(iii) Agencies or instrumentalities of a foreign government.

§ 590.250 Chief officer responsible for procurement. The term "chief officer responsible for procurement" when used in Subchapter A, Chapter IV of this title, and this Procedure is construed to mean the Head of any Procuring Activity.

§ 590.251 Appropriated funds. The term "appropriated funds" comprises all funds available to Army Establishment installations and agencies by allotment to or authorization to obligate appropriated funds irrespective of the Governmental department or agency administering the appropriation. Welfare, organizational, unit, or similar funds are not included under this definition.

§ 590.252 Change orders and supplemental agreements. Change orders and supplemental agreements are types of contract modifications. A change order is ordinarily the proper medium for effecting changes under a contract con-

taining provisions permitting such changes under specified circumstances similar to the Changes Clause in § 406.103-2 of this title. Such change orders are confined to changes which the contract authorized the Government to make, and since the contract authorizes such changes to be made and since the contractor has agreed that the Government can make such changes (including, under certain circumstances, an equitable adjustment in price), change orders may be issued without the consent of the contractor. Conversely, a supplemental agreement is the proper medium for effecting changes to a contract which the contract does not authorize the Government to make (i. e., changes not covered by the Changes Clause or other clause of the contract) and which accordingly cannot be made without the consent of the contractor. A supplemental agreement is, therefore, in effect a new contract which, being with the same contractor and for performance under substantially the same terms and conditions is, for convenience, added as a supplement to an existing contract. Regardless of the form of contract employed, the distinction as to whether a supplemental agreement or a change order is required, therefore, rests upon whether the contractor is bound by existing contract to perform the proposed change or whether such change cannot be required of him without his consent and acceptance. In connection with change orders and supplemental agreements, it is a requirement that contracts can be modified only in the interests of the United States.

SUBPART C—BASIC POLICIES

§ 590.301 Methods of procurement. Department of the Army policies with respect to procurement by formal advertising or by negotiation, are set forth in §§ 591.102 and 592.101 of this chapter. In connection with the placement of contracts during a period of national emergency, it is essential that contracts be spread across industry as widely as possible in order to broaden the industrial base of the procurement program. All Procuring Activities and agencies will give particular attention to the following in effecting procurement:

(a) The greatest possible integration of current procurement contracts with the industrial mobilization program and the accepted schedules of production.

(b) The equitable distribution of procurement contracts among the maximum number of competent suppliers. The concentration of contracts with a few leader suppliers is to be avoided unless the necessity therefor is clear.

(c) The utilization of existing open industrial capacity to the maximum. Expansion of facilities should not be authorized when open capacity can be found. Whenever time permits, and in order to broaden the mobilization base, additional contractors should be utilized in lieu of multi-shift or overtime operation.

(d) The fullest possible use of small business concerns.

(e) The utilization in negotiation of competition and multiple awards, whenever possible.

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(f) The aggressive encouragement or requirement of subcontracting by prime contractors.

(g) The provision of maximum incentive to the producer for the reduction of his costs.

(h) The placement of contracts with a view to economies in the use of transportation facilities.

(i) The availability of manpower in distressed employment areas or in areas of manpower shortages.

(j) The reservation of special skills and abilities for the more difficult production tasks.

§ 590.302 Sources of supply.

§ 590.302-2 Sources outside the Government—(a) *Sources of supply for foods of animal origin.* Procurement of foods of animal origin, including meat and meat food products, poultry and poultry products, milk and dairy products, fish and fishery food products, fats and cooking oils, game, and all food supplies of which any of the foregoing foods of animal origin form a significant part, will be made from only those sources which are approved with respect to sanitation in accordance with standards and procedures prescribed in Part 608 of this chapter.

§ 590.302-3 Small business concerns. (a) Heads of Procuring Activities will encourage, so far as consistent with law, the participation of small business in the procurement programs of their respective Activities.

(b) Procuring Activities will publicize, to the maximum extent practicable (1) that it is not necessary for prospective suppliers to employ agents, counselors, advisers, or any agencies on a commercial basis in order to obtain Government business, and (2) that such persons or agencies cannot obtain Government business for prospective suppliers which these suppliers cannot obtain themselves through appropriate Government channels.

(c) Procuring Activities will publicize, to the maximum extent practicable, that prospective suppliers should write direct to the appropriate purchasing office for inclusion of their names on a bidders' mailing list.

(d) Procuring Activities, whenever practicable, will assist in advising small business concerns in the methods of doing business with the Army and in finding the proper channels of information. In this connection a pamphlet has been prepared entitled, "How to Sell to the United States Army," for distribution to small business concerns and those firms which are not accustomed to doing business with the Army. Purchasing offices desiring copies of this pamphlet should direct their request to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) through command channels.

(e) The report of contracts placed with small business concerns referred to in § 400.302-3 of this title will be made in accordance with the requirements of Subpart H of this part.

(f) This section is not applicable to procurement outside the United States, its territories and possessions.

§ 590.303 Ineligible contractors and disqualified bidders. Contractors against whom certain specific prohibitions have been effected in connection with their contractual relationship with the Army Establishment and the procedures to be followed in connection therewith are divided into three general classifications: Disqualifications under certain statutes (paragraph (a) of this section), suspensions due to allegations or suspicions of fraud and criminal conduct (paragraph (b) of this section), and debarment by administrative action (paragraph (c) of this section).

(a) *Disqualifications under certain statutes.* Contracts shall not be placed with persons or firms who are indicated to be in any of the following categories of disqualified bidders:

(1) Persons and firms listed by the Comptroller General in accordance with section 3 of the Walsh-Healey Public Contracts Act (41 U. S. C. 37) which have been found by the Secretary of Labor to have violated any of the representations and stipulations required by that act.

(2) Persons and firms listed by the Department of Labor which have been held ineligible to be awarded contracts subject to the Walsh-Healey Public Contracts Act for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1 (a) of said act.

(3) Persons and firms listed by the Comptroller General in accordance with section 3 of the Davis-Bacon Act (40 U. S. C. 276a-2) found by the Comptroller General to have violated said act.

(4) Persons and firms which have violated any of the provisions of the Buy American Act (41 U. S. C. 10a-d).

Inquiries from contractors or individuals listed as ineligible or disqualified by the Comptroller General and the Department of Labor under the Walsh-Healey or Davis-Bacon Acts shall be answered by indicating the nature of the prohibition as indicated on the consolidated list and requesting that the inquirer communicate with:

Wage and Hour and Public Contracts
Divisions,
Department of Labor,
Fourteenth Street and Constitution Avenue NW.,
Washington 25, D. C.

(b) *Suspension due to allegations or suspicions of fraud and criminal conduct—(1) General.* The prompt reporting of suspected fraud or criminal conduct is of extreme importance. All persons concerned with negotiation, execution, administration, and settlement of Army contracts will be on the alert for the possibility or evidence of fraud or criminal conduct at all times. Generally, most reports or accusations relating to fraud or criminal conduct will result first in a suspension by Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) under this paragraph and investigation by the Department of Justice before any consideration will be given to administrative debarment as set forth under paragraph (c) of this section.

(2) *Reporting procedure.* All reports and exhibits, and all supplements there-

to, including letters of transmittal and interim correspondence, will be transmitted through channels, in quadruplicate, to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch). Reports should contain a full statement of the pertinent facts indicating alleged criminal conduct, fraudulent activity, or suspicion thereof and will be supported by appropriate exhibits. All such reports initiated by disposal, inspection, audit, engineering, and other advisory or technical personnel, under Department of the Army contracts, will be addressed to the Contracting Officer concerned and will be adequately documented by initiating personnel. The Contracting Officer will take whatever action he deems necessary and appropriate consistent with the protection of the interests of the Government. Such reports, accompanied by the remarks, conclusions, and recommendations of the Contracting Officer, will then be forwarded, through channels, to the above indicated addressee. Reports of suspected collusion between contractor and Government personnel will be made direct to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) by the initiating agency.

(3) *Suspensions.* The determination to suspend a suspected contractor will be the responsibility and within the authority of the Assistant Chief of Staff, G-4, (Chief, Current Procurement Branch). Formal suspension directives, when determined necessary and requiring the responsibilities and prohibitions contained in subparagraphs (5) through (11) of this paragraph, will be issued by the Assistant Chief of Staff, G-4, (Chief, Current Procurement Branch). Such determinations will be coordinated with the Assistant Judge Advocate General, Procurement Division, and The Inspector General, when appropriate.

(4) *Liaison with the Department of Justice and other military departments.* (i) The Assistant Judge Advocate General has been designated as the representative of the Under Secretary of the Army to effect necessary liaison between the Department of the Army and the Department of Justice. In accordance with established procedures, reports of suspicion of fraud will be forwarded in triplicate to that office by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) for coordination and necessary action with the Department of Justice when appropriate.

(ii) The Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) will effect the required liaison with the other military departments.

(5) *Responsibility of Heads of Procuring Activities.* The Heads of Procuring Activities will be responsible for taking the appropriate administrative actions indicated in subparagraphs (6) through (12) of this paragraph upon receipt of notice of suspension or when reporting suspicion or evidence of fraud or criminal conduct.

(6) *Preliminary report.* As soon as possible after receipt of the notice of suspension and within 30 days, or con-

current with the reporting of suspicion of fraud, the Heads of Procuring Activities will submit a brief report to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) (Report on Contractual Status of Suspended Contractors, Reports Control Symbol CSGLD-228), indicating the current contractual relationship between the suspended contractor and the agency submitting the report. This report will consist of a brief statement of the status of outstanding contracts, if any, either proposed, current, or terminated but unsettled. Information relating to going current contracts will be reported as outlined in subparagraph (7) of this paragraph. The extent to which such persons or firms are considered necessary and essential suppliers will be indicated. Negative reports indicating no current or presently proposed contracts are required.

(7) *Procurement*—(i) *Current contracts.* The administration of contracts on which performance is current is within the responsibility and authority vested in the Head of a Procuring Activity.

(ii) *Service reporting suspicion of fraud.* It will be the additional responsibility of the Head of a Procuring Activity reporting suspicion or evidence of criminal conduct, and administering a current contract, to determine whether it will be in the best interests of the Government to (a) continue contract administration in any of its phases (such as acceptance of deliveries, inspection at contractor's plants, issuance of certain instructions), except payment, where specifically required by the provisions of the contract and to avert a technical or actionable breach of contract by the Government; or (b) to exercise any contract right (such as termination for default or convenience, rejection or recovery due to latent defects). In making such determination, full consideration will be given to the nature of and the circumstances surrounding the suspicion or evidence of fraud being reported. The facts, circumstances, requirements, and provisions considered in reaching such determination will be included in the Preliminary Report required in subparagraph (6) of this paragraph. In cases where doubt exists as to the effect of continuation of any phase of administration on the investigation and possible prosecution of the suspected contractor, it will be appropriate to refer the determination of the matter to the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4, Department of the Army, together with the recommendations of the Head of the Procuring Activity.

(iii) *Services receiving notice of suspension.* In cases where a current contract(s) is (are) being administered by a Procuring Activity not the initiating agency of the report of suspected criminal conduct, a statement of the minimum contract administration immediately required by the contract (such as acceptance of deliveries, rejection, price analyses, etc.) will be included in the Preliminary Report (subparagraph (6) of this paragraph).

(iv) In both subdivisions (ii) and (iii) of this subparagraph, contract administration at the minimum required will be continued in operation, with the exception of payment, until final determination of the matter has been accomplished by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) who will coordinate such final determination with the Office of the Under Secretary of the Army (Assistant Judge Advocate General, Litigation Division) and the Department of Justice, if appropriate.

(v) *Procurement with suspended contractors.* No additional procurement will be made from, nor any commitments of any nature given to, firms or individuals suspected of having defrauded the Government and who have been placed in suspension, until written clearance for each individual procurement has been obtained from the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) who will coordinate the matter with the Office of the Under Secretary of the Army (Assistant Judge Advocate General, Litigation Division) and the Department of Justice, if appropriate. However, bids submitted by suspended contractors will be received, recorded and retained in accordance with established procedures. In cases where a suspended contractor is the low bidder (or in the case of surplus or salvage sales, the high bidder), information relating to the low (or high) bid and the next higher bid will be furnished to the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch), for determination as to the necessity of placement of any awards with the suspended contractor. Bids from suspended contractors will not be automatically rejected by Contracting Officers solely because of the suspension.

(8) *Terminations.* Negotiation towards settlement of terminated contracts will cease with the suspension of a contractor. Negotiations must likewise cease with respect to terminated subcontracts either let or held by the suspended contractor. All delegations of authority, if any, under JTR 642 (PR 15) or under any like regulation will be immediately revoked without explanation.

(9) *Payments.* (i) No payments of any type will be made to any suspended contractor either under procurement or termination unless specifically directed. Upon receipt of notice of suspension, disbursing officers will promptly forward any administratively approved vouchers in or coming into their possession to the Office, Chief of Finance (Attn: Receipts and Disbursement Division). Procuring agencies, holding or in receipt of properly certified invoices covering amounts properly due the suspended contractor, will prepare and process (administratively approve) the necessary vouchers and will forward the certified vouchers to the Office, Chief of Finance (Attn: Receipts and Disbursement Division), through their assigned Disbursing Officers inviting attention to the fact that the contractor concerned is under suspension. This procedure will be followed whenever any additional or new amounts

become due during the period of suspension.

(ii) In cases where, in the opinion of the Contracting Officer, it is believed that circumstances surrounding either the procurement or the suspicion of criminal conduct are of such a nature as to permit or require complete or partial release of withheld funds due and owing the suspended contractor, recommendation for such release, including a full statement of the particulars supporting such recommendation may be made by the Contracting Officer, through channels, to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), who will coordinate the determination of the matter, through the Office of the Under Secretary of the Army (Assistant Judge Advocate General, Litigation Division), with the Department of Justice, if appropriate.

(10) *Release from suspension.* After a contractor has been placed in suspension, as indicated above, such suspension will not be lifted until such action has been directed by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), who will coordinate the release through the Assistant Judge Advocate General, Litigation Division, with the Department of Justice.

(11) *Departmental inquiries.* When a firm or individual has been suspended because of suspicion of fraud, the Contracting Officer will ordinarily address his own inquiries, in quadruplicate, as to status and progress of the case in question, through channels, to Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), and will not contact the local offices of the Department of Justice, the U. S. Attorney, or the Federal Bureau of Investigation in such connection.

(12) *Contact with suspended contractors.* Reports required by these regulations and all actions accomplished relating thereto are confidential. In the event a suspended contractor makes inquiry as to reason or cause of prohibitions indicated above, or for any other reason, the supplying of any information relating to the suspension, either by reference or detail, is prohibited. Instead, the contractor will be advised that consideration is being given his contract, or contractual relationship, by the Office of the Under Secretary of the Army (Assistant Judge Advocate General, Litigation Division) and that all contractor inquiries regarding such matters should be addressed in writing direct to that office.

(c) *Debarment by administrative action*—(1) *General.* Debarment of a contractor for acts constituting fraud or attempted fraud against the United States or deliberate and gross violation of contract provisions may be effected by the Department of the Army but must be based on adequate evidence rather than on allegation or accusation. The Comptroller General states:

When the interests of the United States require the debarment of a bidder no question will be raised by this office with respect thereto, provided the length of time of such debarment is definitely stated and not un-

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reasonable, and the reasons for the debarment, with a statement of the specific instances of the bidder's dereliction, are made of record and a copy thereof furnished the bidder and this office.

(2) *Determination of debarment.* The determination to debar a bidder from future bidding on Army Establishment contracts will be the responsibility and within the authority of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch). Recording of the debarment and furnishing advice of the action to the contractor and the Comptroller General will also be a function of the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch).

(3) *Request for debarment.* Debarment action may be initiated by any Procuring Activity and forwarded through appropriate channels to the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch), for determination.

(4) *Adequacy of request for debarment; responsibility.* A request for debarment will be submitted in triplicate and contain a complete certified statement of the facts concerning the bidder's dereliction, including affidavits, depositions, records of action, if applicable, and any other relevant data. Names and addresses of all persons having knowledge of the circumstances will be included. The Head of a Procuring Activity will be responsible for the adequacy and propriety of all requests initiated under his command, particularly as to basis and adequacy of evidence. Care should be taken not to usurp the prerogatives of the Department of Justice in concluding that certain acts constitute fraud against the Government.

(5) *Procedure after debarment.* When the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch), after consideration of all of the evidence submitted, determines that it is in the best interests of the Government to debar a contractor from future bidding on Army contracts and so notifies the Procuring Activities, the following procedure will become effective:

(i) Debarred contractors will not be carried on any bidders' mailing list and bids will not be invited from them.

(ii) No awards will be made to any debarred contractor during the period specified for debarment.

(iii) In the event that a bid is tendered by any debarred contractor, it shall be received and recorded with the other bids offered on the purchase. If the bid is low, it will then be rejected, and the reason therefor shall be stated in the certificate to the General Accounting Office as follows:

In accordance with the decision of the Comptroller General of the United States contained in his letter to the Secretary of War, dated 23 July 1929, the bid of _____ is rejected because of previous unsatisfactory business dealings with the Department of the Army.

(iv) All inquiries relating to debarred bidders will be forwarded, in triplicate, to the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch).

(d) *Consolidated listing of suspended and ineligible contractors and disqualified bidders.* In conjunction with the information and actions contained in the preceding subparagraphs, a consolidated confidential list will be issued by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) for the use and guidance of all interested agencies of the Army Establishment. The comprehensive list will be composed of an alphabetical listing of all firms or persons suspended, ineligible, or disqualified from entering into contractual relationships with the Government. Information will be supplied indicating the reason for and the extent of the suspension or prohibition. Care will be taken by contracting personnel to give full effect to modifications of or releases from suspension. The listing shall comprise the following groups of persons and firms which are subject to the prohibitions indicated:

(1) *Suspensions initiated by the Army and affecting Army contracts.* Contractors who have been placed in suspension or debarred by administrative determination in accordance with the procedures and prohibitions prescribed in paragraph (b) (5)-(12) of this section and in paragraph (c) of this section or suspended or debarred under like circumstances by the other military departments.

(2) *Disqualifications initiated by agencies other than the military and prohibitions effected.* (i) Persons and firms listed by the Comptroller General in accordance with section 3 of the Walsh-Healey Public Contracts Act which have been found by the Secretary of Labor to have violated any of the representations and stipulations required by that act. No contracts will be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons have a controlling interest, for a period of 3 years from the dates on which it was determined such breaches occurred. (See Part 411 of this title for specific provisions of Walsh-Healey Act.)

(ii) Persons and firms listed by the Department of Labor which have been held ineligible to be awarded contracts subject to the Walsh-Healey Public Contracts Act for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1 (a) of said act. Such persons, corporations, or firms will not be awarded any contract unless a change in status is shown and so determined by the Department of Labor prior to the award of any such contract.

(iii) Persons and firms listed by the Comptroller General in accordance with section 3 of the Davis-Bacon Act found by the Comptroller General to have violated said act. No contract is to be awarded to any contractor, or any firm, in which the contractor has an interest for a period of 3 years from the publication of the list containing the names of the violators.

(iv) Sections 590.303, 590-303-1, and 590.303-2 are applicable to procurement outside the United States, its territories and possessions in principle and policy, but Contracting Officers will be guided

by the laws of the local foreign government of the country in which procurement is to be effected and by such procedural instructions (based on the policies and procedures contained herein) as may be issued by the Head of the Procuring Activity. Suspensions by major overseas commanders will be coordinated with local authorities of the other military departments. A report, in triplicate, setting forth the basis for and the action being taken in any case of suspected fraud or criminal conduct will be furnished the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch), for information as the incidents occur. A closing report of completed action will be furnished also.

§ 590.303-1 Additions to and removals from Consolidated List of ineligible or suspended contractors and disqualified bidders. Interim notices indicating additions to, modifications of, or removals from the Consolidated List will be issued by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), when appropriate.

§ 590.303-2 Exchange of lists. The Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch), will supply the Departments of the Navy and the Air Force with copies of the Consolidated List, and any interim changes thereto, for information and guidance and will publish additional information received from those Departments.

§ 590.305 Specifications; general. Every item procured either on an invitation for bids or by negotiation shall be described by referencing the applicable specifications or, in lieu thereof, shall contain a description when authorized as prescribed in paragraph (c) of this section; except that no specification in accordance with this section is required in connection with the purchase of items for authorized resale when, to satisfy customer preference, the purchase is being made upon the basis of a brand-name; or the procurement falls within the provisions of § 402.210-2 (m) of this title.

(a) *Specifications authorized for procurement.* The following types of specifications are authorized for use in procurement, in the order of preference as listed:

- (1) Federal specifications.
- (2) Military (MIL, JAN) specifications.
- (3) Air Force-Navy Aeronautical specifications.
- (4) Uncoordinated Military (MIL) specifications.
- (5) United States Army specifications.
- (6) United States Air Force specifications.
- (7) Navy specifications.
- (8) Tentative specifications.
- (9) Other Government departmental specifications.
- (10) Purchase descriptions.
- (b) *Use of tentative specifications.* Tentative specifications are authorized for purchase of items, materials, processes, or services as follows:

(1) Those required for research and development projects, including experimental, engineering, user (service), and troop tests, provided the technical and quantity requirements of the items are approved for these purposes by appropriate technical committee action.

(2) Those required for the current military procurement program, provided the applicable tentative specification is actually in process of conversion to a Military or Federal specification.

(3) Those required for components, spare parts, or materials required for maintenance of existing stocks of matériel or for items required for maintenance and operation of established installations.

(4) Requests for authority to use tentative specifications for purposes other than those listed above shall be made to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Standards Branch), and shall fully justify the necessity for making an exception. Normally, approval will be given only for purchases required to meet emergency or special requirements.

(c) *Description in lieu of specifications*—(1) *Spare parts*. The use of purchase descriptions in lieu of specifications is authorized for procurement of spare parts necessary for maintenance of existing stocks of matériel or for items required for maintenance and operation of established installations.

(2) *Supplies other than spare parts*. If the item required is not covered by an authorized specification, and preparation of a specification is not justified, a drawing and/or a description containing all of the essential requirements to be met by the article shall be used instead. If, because of technically involved construction, or other sufficient reasons, such description cannot be made, the name of one or more makes of the item, including the words "or equal," shall be specified so as not to limit competition to the particular makes named. The use of "or equal" is authorized as an expedient only, and is not considered normal procedure. Repeated use of a purchase description for the purchase of any item indicates a need for a specification and shall be reported to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Standards Branch).

(d) *Oversea purchases*. Contracting Officers are authorized to deviate from this section, subject to any instructions which may be issued by the Head of the Procuring Activity involved, for procurement effected outside the United States, its territories and possessions, to the extent of using where necessary such specifications, standards, and purchase descriptions of foreign governments and foreign trade associations, which will be readily understood by foreign vendors, provided that adequate measures are taken to insure satisfactory and acceptable products, including standard and interchangeable items, where required. Reports prescribed by this section will not be required for such procurement.

(e) *Supply of specifications to activities outside the Government*. A liberal attitude shall be taken in complying with requests for specifications from prospec-

tive bidders and possible manufacturers of supplies, whether for the purpose of broadening the peacetime market or for establishing new sources of supply in case of emergency.

(f) *Options permitted by specifications*. Many adopted specifications cover several grades or types and provide for several optional methods of inspections, packaging, etc. When such specifications are used in conformity with paragraph (a) of this section, the invitation or request for proposal shall specifically state the grade, type, or method of inspection, etc., on which bids or quotations are to be based.

§ 590.350 F. o. b. purchasing policy. Unless there are valid reasons to the contrary (such as, but not restricted to, industry practice, or destination unknown) all supply contracts shall provide for delivery as follows:

(a) When it is estimated that no shipment to a single destination will equal a minimum carload lot (a minimum carload lot shall be deemed to weigh approximately 20,000 pounds), delivery shall be made on the basis of all transportation charges paid to destination (within the continental United States).

(b) When it is estimated that any single contract will require a shipment of minimum carload lot, delivery and acceptance may be either on the basis of f. o. b. plant or on the basis of all transportation charges paid to destination (within the continental United States), whichever is more advantageous to the Government.

§ 590.350-1 Formal advertising. In furtherance of this policy in the case of formal advertising, bids for supplies will be invited as follows:

(a) When it is estimated that no shipment to a single destination will equal a minimum carload lot, bids shall be invited on the basis of delivery by the contractor, all transportation charges paid to destination (within the continental United States).

(b) When it is estimated that a single contract (to be awarded) will provide for a shipment to a single destination of a carload lot or more, bids shall be invited as follows:

Bid A—All transportation charges paid to destination (within the continental United States), and

Bid B—F. o. b. carriers' equipment, wharf or freight station at a specified city or shipping point.

The Invitation for Bids will provide that bidders may bid on either or both bases A and B.

§ 590.350-2 Evaluation of bids and proposals. (a) Bids and proposals will be evaluated on the basis of over-all cost to the Government. In connection with bids or proposals submitted on an f. o. b. origin basis, transportation costs between the source of supply and the designated destination point or points will be considered in determining the lowest estimated cost to the Government.

(b) To facilitate the evaluation of bids and proposals and to assure accurate analyses, Contracting Officers will request the advisory services of local transportation officers to assist in determining

the lowest possible transportation costs to a given point.

§ 590.350-3 Furnishing of freight rates. (a) The function of furnishing freight rates for use by Contracting Officers for the evaluation of bids and proposals as required by § 590.350-2 has been assigned to continental army commanders. Continental army commanders will establish procedures within their respective areas for furnishing rates and will maintain centralized tariff files in the Office of the Army Transportation Officer in order to provide a rate quoting service to purchasing offices. The rate quoting service operated by continental army commanders for purchasing offices is under the technical supervision of the Chief of Transportation.

(b) Purchasing offices will obtain freight rates from the Army Transportation Officer in the headquarters of the continental army command within whose geographical limits the purchasing offices are located regardless of the origin and destination points of the intended purchases, except that a rate quoting service will be provided in the Office of the Chief of Transportation for purchasing offices assigned within the Military District of Washington.

§ 590.350-4 Oversea purchases. Subject to any instructions which may be issued by the Head of the Procuring Activity involved, Contracting Officers are authorized to deviate from §§ 590.350-590.350-4 in effecting procurement outside the continental United States.

§ 590.352 Limitation on purchase and maintenance of motor vehicles or aircraft. Section 16 of the act approved 2 August 1946 (60 Stat. 810; 5 U. S. C. 78) includes definite restrictions on the purchase of passenger motor vehicles (exclusive of buses, ambulances, and station wagons) or aircraft, and their maintenance, operation, and repair. Since such restrictions also cover matters other than purchase, the restrictions and prescribed procedures to be followed, including the certificate to be placed on procuring instruments, are published from time to time in Special Regulations.

§ 590.353 Public release of long-range procurement estimates. To assist industry to plan its production and to better serve the requirements of the Armed Services, from time to time it may be necessary to announce publicly unclassified long-range (9-months or over) procurement estimates on certain items, groups, or types of items or materials procured by the Armed Services.

(a) Public releases of long-range procurement estimates may be made by technical services when the head of technical service determines that—

(1) The information to be released will, in fact, actually assist industry in its planning and facilitate the meeting of the procurement requirements of the Armed Services.

(2) The announcement will not adversely affect procurement of Armed Services requirements by encouraging such malpractices as attempts to corner

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the market or the hoarding of industrial materials.

(3) The information to be released will not indicate the extent of industrial mobilization of the industry as a whole or its potential mobilization capacity.

(b) The procedures set forth below will be followed in the preparation and making of public releases of long-range procurement estimates:

(1) The head of the technical services concerned will be responsible for the determination of the need for, and the preparation of, the proposed announcements.

(2) Only unclassified information will be released.

(3) The information will be publicized as widely as possible, consistent with the needs of the individual case, and will be released so as to reach all potential suppliers as nearly simultaneously as possible.

(4) In each release a statement will be made that the forecast is based on the best information available at the time of publication, but is always subject to modification.

(5) Each release will contain information as to the names and addresses of the purchasing offices that should be contacted by prospective suppliers regarding the forthcoming procurements.

(6) Major modifications in the original announced estimate will be publicized as expeditiously as possible and in the same manner as the original.

(7) Proposed announcements will be addressed to the Chief of Information (Public Information Division, Department of the Army).

(8) No actual releases will be made by the head of the technical service unless authorized by the Chief of Information, Department of the Army.

SUBPART B—PROCUREMENT RESPONSIBILITY AND AUTHORITY

§ 590.401 Responsibility of each Procuring Activity. (a) Heads of Procuring Activities are responsible for the procurement of all supplies and services as assigned in accordance with the policy prescribed in Part 593 of this chapter.

(b) Purchases will be made only by Contracting Officers duly designated as such (see §§ 590.402 and 590.450).

(c) Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, Department of the Army, will exercise the functions of Head of a Procuring Activity for all Contracting Officers of the Army Establishment not under the jurisdiction of a Head of a Procuring Activity as listed in § 400.201-4 of this title.

(d) Authority is hereby delegated to the following to make necessary procurement of supplies and services required to carry out their functions:

(1) Attachés.

(2) Chiefs of foreign missions (Army).

(3) Chiefs of Army sections of any joint military mission not operating under the jurisdiction of a major oversea command.

(4) Superintendent, U. S. Military Academy, West Point, N. Y.

(5) Such others as may be specifically designated in writing from time to time.

§ 590.402 General authority of contracting officers. Properly designated Contracting Officers are granted all authority conferred by law, the Armed Services Procurement Regulation, this Procedure and by Procuring Activity instructions, but only to the extent as limited therein and as that authority may be limited in the orders designating them as Contracting Officers.

(a) Contracting Officers are agents of the Government and must act in accordance with the law and within their prescribed duties and limited authority. Contracting Officers must insure that their acts are in full accord with their authority. The acts of a Contracting Officer bind the Government only when the action is authorized.

(b) Contracting Officers may enter into, amend, modify and take other action with respect to contracts provided (1) approval of award has been obtained, if approval is required by this Procedure, and the contract embodies the award as approved, (2) the contract is written on a standard or an approved form of contract, (3) the contract is authorized by law and complies with the provisions of the Armed Services Procurement Regulation and this Procedure with respect to the use of contract clauses and does not contain any clause or involve matters in conflict with the established policy of higher authority and, (4) compliance has been effected with all other requirements of law, the Armed Services Procurement Regulation, this Procedure, and the applicable Procuring Activity instructions.

§ 590.403 Requirements to be met before entering into contracts. Irrespective of whether procurement is to be effected by formal advertising or by negotiation, a contract may be entered into by a Contracting Officer only if—

(a) All applicable requirements of law, of the Armed Services Procurement Regulation, of this Procedure, and of the appropriate Procuring Activity instructions, have been met.

(b) Such business clearances or approvals as are prescribed by this Procedure and by applicable Procuring Activity instructions have been obtained.

(c) The contract is written on a standard or an approved form of contract.

(d) The contract does not contain any unauthorized clauses or involve any matter which is inconsistent or in conflict with the established policy of higher authority.

§ 590.450 Designation of Contracting Officer. (a) Contracting Officers, as defined in § 400.201-5 of this title, shall be those designated by the persons listed below, or by persons who are authorized by the persons listed below to designate Contracting Officers. When so designated, they shall have the authority set forth in § 590.402 and the general responsibilities set forth in § 590.453.

(1) The Secretary of the Army.

(2) The Under or Assistant Secretary of the Army responsible for procurement.

(3) The Assistant Chief of Staff, G-4, Department of the Army.

(4) Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army,

(5) Head of any Procuring Activity.

(6) Attachés.

(7) Chiefs of foreign missions (Army).

(8) Chiefs of Army sections of any joint military mission not operating under the jurisdiction of a major oversea command.

(9) Superintendent, U. S. Military Academy, West Point, N. Y.

(10) Such others as may be specifically designated in writing from time to time.

(b) The designation of Contracting Officers shall be in writing and may be accomplished by general or special instructions.

§ 590.451 Designation of representatives. A Contracting Officer may designate any officer or civilian official to act as his authorized representative. Such designation shall be in writing and shall define the scope and limitations of the authorized representative's authority.

§ 590.452 Authority of representatives. A designation authorized by § 590.451 may be made by instructions referring to particular contractual instruments, and may, to the extent not specifically prohibited by the terms of the contractual instrument involved, empower the authorized representative to take any or all action thereunder which could be lawfully taken by the Contracting Officer. In no event, however, shall an authorized representative, by virtue only of his designation as such, be empowered to execute or agree to any contract or modification thereof.

§ 590.453 General responsibility of contracting officers. (a) Contracting Officers are primarily responsible for the execution and administration of contracts, to safeguard the interests of the United States in contractual relationships, and to determine the facts under contracts.

(b) Contracting Officers shall personally sign all contracts and modifications entered into by them. This authority cannot be delegated to others. The signing of contractual documents will not be accomplished by facsimile stamps or by proxy.

(c) Contracting Officers are responsible under law and regulation for their acts as Contracting Officers.

(d) Contracting Officers shall be bound in all their actions to exercise reasonable care, skill, and judgment.

(e) Contracting Officers must assure themselves that the contract is authorized by law, that funds are available, and of their authority to subject the Government or its property to any risk.

(f) Contracting Officers are responsible for maintaining constant cognizance with respect to contract compliance on the part of the contractor.

(g) Contracting Officers are responsible for the legal, technical, and administrative sufficiency of the contracts they make. They should not hesitate to secure legal and technical advice within the Army Establishment.

(h) Contracting Officers are responsible for performing or having performed any legal or administrative actions necessary to properly assure the satisfactory performance of their contracts.

(1) Contracting Officers are responsible for knowing the scope and limitation of their authority.

§ 590.454 Delegation of authority. Authority conferred upon any of the Heads of Procuring Activities under any paragraph of the Armed Services Procurement Regulation and in this Procedure may be exercised by the Heads of the Procuring Activities, or by redelegation, through such officer or officers or civilian official or officials of the Army Establishment as may be designated by them or by any person authorized by them to make such designation, with such powers of delegation or successive redelegation as they may deem appropriate; subject, however, to any provisions in the particular section of the Armed Services Procurement Regulation or this Procedure:

(a) Forbidding the assignment or delegation of the authority mentioned in such section, or

(b) Imposing limitations upon the assignment, delegation or exercise of such authority.

The exercise prior to the date of this Procedure of any such authority by any such officer or officers or civilian official or officials of the Army Establishment is hereby ratified and confirmed, providing such authority could have been granted in the first instance.

§ 590.455 Standards of conduct. In all procurement functions stress shall be placed on the importance of protecting the interests of the Government. It shall be the responsibility of all persons, military and civilian, engaged in procurement and related duties to be guided by the standards and instructions set forth below.

(a) *General policy.* The broad general policy with regard to conflicting private interests of military and civilian personnel assigned to procurement and related duties is as follows: All personnel of the Army, military or civilian, are bound to refrain from all business and professional activities and interests not directly connected with their duties which would tend to interfere with or hamper in any degree their full and proper discharge of such duties or which would normally give rise to a reasonable suspicion that such participation would have that effect. Any departure from this underlying principle would constitute conduct subject to disciplinary action. If such persons find that their duties require them to act as agents of the United States in a manner from which they may derive financial profit or other benefits, they will report the facts immediately to higher authority with a view to their relief from their assignments or such other action as may be deemed appropriate. Agents of the Government must not accept gratuities intended to influence the strict impartiality that must prevail in all business contacts.

(1) It is imperative that personnel engaged in Army procurement activities maintain the highest standards of personal conduct in their relations with commercial firms, organizations, and individuals having business dealings with the Government. Because of the posi-

tion of trust in which Army procurement personnel have been placed, they bear a heavy responsibility for protection of the Government's interests with absolute integrity and strict impartiality.

(2) When civilian employees or military personnel, including Reserve personnel on temporary duty, are assigned to Army procurement work, their attention will be directed to the provisions of this section and AR 600-205.

(3) Personnel assigned to duties relating to Army procurement shall inform their immediate superiors of any business affiliations they may have in order to insure that they are not placed in positions which may involve business dealings between the Government and any firms with which they are affiliated.

(4) Appropriate measures shall be taken by all concerned to avoid any grounds for possible criticism of Army procurement on the basis of favoritism.

(5) Army procurement personnel shall not accept from any business firm any money, gift, or favor of value which might influence or be suspected as influencing their conduct in representing the Government in procurement or related transactions. Individuals shall courteously decline to accept or shall return any such gift or favor offered them and shall report to their immediate superiors full information regarding the offer or receipt of any such gift of more than nominal value. In any case where return of a gift is not feasible because of its nature, such as perishability, disposition may be made to a local charitable institution and the donor informed of the disposition.

(6) Procurement personnel shall avoid personal business transactions with firms with which they are dealing in behalf of the Government. Personal loans must not be accepted from such firms on any basis.

(7) Army personnel shall not confer special benefits upon particular suppliers, such as by giving them information of proposed purchases, unless such information is also made available to all competing suppliers (paragraph (e) of this section).

(8) Although hard and fast rules applicable to every incident cannot be laid down covering all contacts with business firms and their representatives, the acceptance of entertainment or hospitality from such firms may tend to compromise both the Army and the recipient and thus impair public confidence in the integrity of business relations between Government and industry. Consequently, procurement personnel must conform to the highest dictates of common sense and good judgment and must consistently take the course that is absolutely sure to be beyond criticism. Individuals should not allow themselves to be placed in situations where unnecessary embarrassment may result from an offer or refusal of the hospitality or business courtesy of a contractor or potential contractor. In the long run it is generally safer to decline any sort of entertainment, hospitality, or other favor than it is to accept with the possibility of overstepping the bounds of propriety. In short, the standards of personal conduct

of Army procurement personnel and their relationships with the commercial firms with whom the Army deals must be above reproach at all times.

(b) *Selection and evaluation of procurement personnel.* The importance of the procurement function to the Army Establishment makes the selection and instruction of procurement personnel a matter of major importance to appointing officials. Such personnel are not only responsible for protecting the Government's interest but also for maintaining the reputation of the Army Establishment for honesty, courtesy, and fair dealing in all relations with contractors.

(c) *Ethics of procurement personnel.* The business ethics of all persons charged with the administration and expenditure of Government funds must be above reproach and suspicion in every respect at all times. The Supreme Court has aptly stated that as a general rule all men have a moral obligation to refrain from placing themselves in relations which excite conflict between self-interest and integrity.

(d) *Limitations on procurement activities.* There are certain statutes which make it a criminal offense for an officer or agent of the United States to engage in practices or activities which are at variance with the full measure of duty which he owes to the United States as such an officer or agent. Certain other practices or activities of officers and other personnel are forbidden either by other law or as a matter of policy by the Department of the Army. Applicable criminal statutes are as follows:

(1) *Interested persons acting as Government agents.* Section 434 of the act of June 25, 1948 (62 Stat. 703; 18 U. S. C. 434).

(2) *Officers or employees interested in claims against the Government.* Section 283 of the act of June 25, 1948 (62 Stat. 697), as amended by sec. 2 (b) of the act of June 28, 1949 (63 Stat. 280; 18 U. S. C. 283).

(3) *Procurement of contract by officer or Member of Congress.* Section 216 of the act of June 25, 1948 (62 Stat. 694; 18 U. S. C. 216).

(4) *Compensation to Members of Congress, officers and others in matters affecting the Government.* Section 281 of the act of June 25, 1948 (62 Stat. 697), as amended by sec. 6 of the act of May 24, 1949 (63 Stat. 90; 18 U. S. C. 281).

(e) *Unauthorized release of procurement information.* It is the individual responsibility of all personnel, both military and civilian, of the Army Establishment to refrain from releasing to any individual or any individual business concern or its representatives any pre-knowledge such personnel may possess or have acquired in any way concerning proposed procurements or purchases of supplies by any Procuring Activity of the Army Establishment. Such information will be released to all potential contractors as nearly simultaneously as possible and only through duly designated agencies, so that one potential source of supply may not be given an advantage over another. All dissemina-

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tion of such information will be in accordance with existing authorized procedures and only in connection with the necessary and proper discharge of official duties. (See also §§ 590.353, 591.202-5, 591.407, 591.451 and 592.150 of this chapter.)

§ 590.456 Responsibility for insuring the availability of funds. Contracting Officers will, prior to the incurrence of an obligation, obtain from the Fiscal Officer a citation of the proper funds to be charged. The Fiscal Officer who is accounting for the funds will be responsible for determining the proper funds to be charged and the sufficiency thereof and for reserving in the fiscal accounts an amount sufficient to pay the obligation to be incurred.

SUBPART E—CONSTRUCTION

§ 590.500 Scope of subpart. This subpart sets forth the general procurement policies of the Army Establishment with respect to military construction and implements Subchapter A, Chapter IV of this title generally rather than a specific section or part thereof.

§ 590.501 New construction. The term "new construction" as used in this Procedure includes the advance planning, preparation of plans, specifications and estimates, design, erection, budgeting and allocation of funds, issuance of directives and provisions of necessary labor, material, equipment, supplies and transportation necessary for: initial erection or installation of any building structure, plant, ground facility, utility system, wharves, airfields, etc., or other real property for the Army built separately or apart from existing facilities.

§ 590.502 Responsibility. The Chief of Engineers is charged with the direction of all work pertaining to new construction for the Army Establishment except as otherwise directed. In the execution of new construction he is charged with the application of Army Establishment construction policies including conformance with construction standards, suitability of the project and for technical and engineering accuracy.

§ 590.503 Authorization. All work under the supervision of the Corps of Engineers, including new work and modifications to work previously authorized, will be accomplished by formal directive issued by the Chief of Engineers. The following, however, are authorized to accomplish emergency construction and necessary repair work for all activities under their jurisdiction:

- (a) Major oversea commanders.
- (b) Major commanders in United States territories and possessions.
- (c) Attachés.
- (d) Chiefs of foreign missions (Army).
- (e) Chiefs of Army sections of any joint military missions not operating under the jurisdiction of a major oversea command.

§ 590.504 Formal advertising. Unless within the authorizations set forth in Parts 402 and 592 of this title, or unless authorized by law, all construction contracts shall be entered into after formal advertising on a lump sum or unit price basis.

SUBPART F—ADMINISTRATIVE PROCEDURES

§ 590.600 Scope of subpart. This subpart sets forth administrative requirements and procedures in connection with (a) documentary evidence of purchases, (b) execution of contracts, (c) numbering of contracts, (d) approval of awards and contracts, (e) information to be furnished in requesting approval of awards and contracts, (f) distribution of contracts, (g) audits by the Army Audit Agency, and (h) contractor's statement of contingent or other fees. It implements Subchapter A, Chapter IV of this title generally rather than a specific part or section thereof.

§ 590.601 Documentary evidence of purchases—(a) Requirement. All purchase transactions made by a Contracting Officer, other than those in which payments are made coincidentally with receipt of the supplies or services, will be evidenced by written contracts (§ 400.201-6 of this title) on approved contract forms, as prescribed by Parts 406 and 596 of this title, and applicable Procuring Activity instructions.

(b) Negotiated purchases not in excess of \$1,000. Negotiated purchases not exceeding \$1,000, which are based on an oral quotation and involve only one payment, shall not require a written agreement, but shall require a written acceptance (Purchase Order) signed by the Contracting Officer. If the purchase order is based upon a written quotation signed by the contractor, or if the contractor delivered some written instrument evidencing the contractor's assent, the original of such written quotation or instrument must be attached to the original purchase order intended for the General Accounting Office. (See Subpart G of this part.)

§ 590.602 Execution of contracts, requirements—(a) Statements as to availability of funds. A statement as to the availability of funds, funds chargeable, and sufficiency thereof will be made on all contracts. In case of formal advertising, this statement should be inserted in the "Accounting and Appropriation Data" block of U. S. Standard Forms 31 and 33. In negotiated contracts such as DD Form 351, 351-1 and 351-2, the statement should appear in the "Appropriation and other Administrative Data" block. In DA AGO Form 383 (Small purchases procedure), the completion of the block under "Accounting Classification" suffices for such statement.

(b) Contracting Officer's signature. In the case of formal advertising, the personal signature of the Contracting Officer on the award consummates the contract. In the case of negotiated contracts, the Contracting Officer will personally sign on behalf of the United States after the contractor has signed, except where otherwise required by the particular contract form, as for example when WD Form 47 is used. In addition, the Contracting Officer's rank or title will be indicated. Proxy and facsimile signatures are not permissible.

(c) Signature by agents of contractors. Contracts executed on behalf of contractors by agents must be accompanied by evidence, satisfactory to the

Contracting Officer, of the agent's authority so to do. In the case of corporations, a certificate in the form included in DD Form 351-2 will be executed; the same officer of the corporation, however, will not execute both the contract and the certificate.

§ 590.603 Numbering of contractual documents.

§ 590.603-1 Purpose. Contracts are numbered with approved letter symbols and serial numbers primarily for use of the General Accounting Office for identification, audit, and filing.

§ 590.603-2 Scope. (a) Documents coming within the purview of §§ 590.603-590.603-8 will include purchase orders, contracts, letter orders, letters of intent, leases, easements, proposal and acceptance documents or other documents evidencing in whole or in part an agreement between the parties, which involves the payment of appropriated funds or collection of funds for credit to the Treasurer of the United States, and herein-after referred to as contracts.

(b) Purchase agreements utilizing DA AGO Form 383 (Purchase Order or Delivery Order and Voucher for Purchases and Services Other Than Personal) do not come within the purview of §§ 590.603-590.603-8 and as such are not subject to any of the provisions contained in §§ 590.603-590.603-8.

§ 590.603-3 Contracts required to be numbered. (a) Contracts involving an amount determined at the time of making the agreement to be \$5,000 or more will be numbered.

(b) Contracts involving more than one payment and/or collection regardless of amount will be numbered.

(c) All other contracts shall be unnumbered except in the following instances:

(1) When any related supplemental document, required to be deposited with the General Accounting Office, is transmitted in connection with an unnumbered contract, and if such related supplemental document serves to remove the contract from the category of contracts not required to be numbered, a number will be assigned to the original contract and will be shown on such supplemental document in addition to the voucher citation in the event any payments have been made prior to the issuance of the supplemental document.

(2) When later determination is made that more than one payment and/or collection is involved or that the amount to be paid or collected equals \$5,000 or more, a number must also be assigned to such contract.

(d) In instances cited in paragraph (c) (1) and (2) of this section, in which payments have been made, a citation to the name of the Disbursing Officer, period of account, and number of the disbursement or collection voucher to which the original unnumbered contract was attached will be promptly furnished to the General Accounting Office by the Contracting Officer concerned.

§ 590.603-4 System of numbering—(a) Contracts. Contract numbers, when required, will be placed in the space provided therefor on the printed contract

form, or, if no such space is provided, in the upper right-hand corner of the contract separate from all other information. A typical example of the general scheme of numbering is illustrated below.

DA-09-177 AIII-1

(1) The capital letters "DA" represent the Army Establishment.

(2) "09-177" represents the station number of the contracting installation. SR 35-218-5 (Special Regulations of the Department of the Army) contains a list of domestic and foreign station numbers which will be used. Request for assignment of station numbers not included in the publications cited herein will be addressed to the Office, Chief of Finance (Attn.: Accounting Procedures Division).

(3) "AIII" represents letter symbols assigned to the agency (in this case, Third Army) that normally would receive allocations of funds from the Comptroller of the Army and under whose jurisdiction the installation commander has received authority to obligate funds and execute a contract.

(i) Letter symbols for use in numbering contracts must be approved by the Comptroller General of the United States prior to use.

(ii) Requests for assignment of letter symbols to activities not included herein will be by letter addressed to the Office, Chief of Finance (Attn.: Receipts and Disbursements Division), which will secure the necessary approval from the Comptroller General of the United States.

(iii) The following letter symbols have been approved by the Comptroller General of the United States for use by the agencies indicated below:

Agency	Symbol
Finance Corps	FD
Signal Corps	SC
Ordnance Corps	ORD
Quartermaster Corps	QM
Transportation Corps	TC
Adjutant General's Corps	AG
Chief of Staff	CSA
Judge Advocate General's Corps	JAG
National Guard Bureau	NG
Military Attaché	ID
Secretary of the Army	OSA
Budget Office, Department of the Army	BUD
Military District of Washington	MDW
Chemical Corps	CML
Army Medical Service	MD
Corps of Engineers	ENG
United States Military Academy	MA
National Board for the Promotion of Rifle Practice	N
Provost Marshal General	PMG
Chief of Chaplains	CH
Information and Education Division	IE
Medical Procurement Agency	MPA
Special Weapons Project	XZ
First Army	AI
Second Army	AII
Third Army	AIII
Fourth Army	AIV
Fifth Army	AV
Sixth Army	AVI
United States Army, Alaska	ASK
United States Army, Caribbean	CAR
Army Advisory Group, China	AGC
Far East Command	FEC
United States Army, Europe	EUC
United States Army, Pacific	PAC
Trieste United States Troops	TRG
United States Forces, Austria	USFA
Joint Brazil-United States Military Commission	BMC

(4) The figure "1" represents the first contract made by the particular installation. Contracts will be numbered by each installation in numerical sequence beginning with number 1 and going through 999,999 without regard to the fiscal year, type of contract, or contracting activity. Contracts issued at each installation beyond 999,999 will be identified by a new series of numbers distinguished by the use of the capital letter "A" at the end thereof. Likewise, any additional series necessary beyond the same symbol will be distinguished by additional capital letters "B," "C," "D," etc. This subparagraph, of itself, does not require that a new series of numbers beginning with No. 1 be instituted.

(b) *Supplemental Agreements and Change Orders.* Supplemental agreements and change orders will bear the same identification as the contract which is modified or amended thereby. In addition thereto, such supplemental agreements and change orders will be identified further by adding the numerals 1, 2, 3, etc., respectively, following the words "Supplemental Agreement" or "Change Order." The same series of consecutive numbers will be used for both supplemental agreements and change orders. Example: 1st Modification—Supplemental Agreement No. 1 to Contract DA-09-177 AIII-1; 2d Modification—Change Order No. 2 to Contract DA-09-177 AIII-1.

(c) *Subcontracts.* Contracting Officers will urge contractors holding prime contracts with the Army Establishment to include in their subcontracts a reference to the number of the prime contract involved. Prime contractors will also be asked to urge their subcontractors to include a reference to the number of the applicable prime contract in sub subcontracts, and so on down the line. This practice will materially assist in accounting and auditing and particularly in the settlement of terminated subcontracts of all tiers.

§ 590.603-5 Determination of numbering agency (a) *General.* Letter symbols are a requirement of the Comptroller General of the United States to indicate command control rather than appropriation chargeable. Contracts which are executed under supervision of a Procuring Activity, regardless of the source of funds used to finance the contracts, are to be regarded and designated by numbering as that Activity's responsibility.

(b) *Commanding officer acting in dual capacity.* Where the commanding officer of an installation is acting in a dual capacity as commanding officer of a class II installation and commanding officer of a class I activity and the installation has only one station number which is assigned for the class II installation, a request may be submitted to the Chief of Finance (Attn.: Accounting Procedures Division) for the assignment of a station number to be used in connection with procurement relating to post activities (class I). The request must contain the correct title of the Procuring Activity, which title must be different from the one presently assigned. If desirable, the title may be changed by

the addition of the word "Post" to the present title.

§ 590.603-6 Delivery orders. Section 590.603-3 is not applicable to delivery orders (DA AGO Form 383 or other form of delivery order) evidencing inter-branch or interdepartmental purchases. As to delivery orders not in excess of \$1,000 and thus permitted to be executed on DA AGO Form 383, see subpart G of this part. As to delivery orders in excess of \$1,000 and thus required to be executed on other form of delivery order, such delivery orders shall not be numbered pursuant to the system described in § 590.603-4, but may be given such other identification as may be prescribed by the Heads of Procuring Activities. When partial payments through unforeseen contingencies later become necessary, the total number of all payments will not exceed four, and similar action will be taken as indicated in § 590.705-6 (b) (2).

§ 590.603-7 Assignment, cancellation, or alteration of contract number. The elements of a contract number (including letter symbol and station number) shall not be altered in any way without the express approval of the Chief of Finance. Requests for assignment, cancellation, or alteration of letter symbols should be addressed to the Office of the Chief of Finance (Attn.: Receipts and Disbursements Division), which will secure the necessary approval from the Comptroller General of the United States. Generally, only those agencies which receive allocations of funds direct from the Comptroller of the Army will be approved.

§ 590.603-8 Miscellaneous provisions. (a) For the purpose of identification and control, a separate numbering system may be established by the installation concerned. This number will not be used as an integral part of, or be in conflict with, the numbering system established herein.

(b) All changes or modifications to contracts now in effect or those herein-after executed shall be governed, with respect to contract numbering, by regulations in effect at time original contract was executed.

§ 590.604 Approval of awards of contracts. Subject to any further instructions which may be issued by the Head of a Procuring Activity, awards of contracts (including supplemental agreements, change orders and other contract modifications) may be made by Contracting Officers without the approval of the award by higher authority, except as stated below. Information to be included with requests for approvals is set forth in § 590.605.

§ 590.604-1 Personal or professional services. Contracts (including supplemental agreements, change orders, and any other type of modification) for personal or professional services will be submitted for approval by the Secretary in accordance with § 592.204 of this chapter, regardless of amount and regardless of the authority used to negotiate. Requests for approval will be addressed to the Chief, Current Procurement Branch,

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Assistant Chief of Staff, G-4, Department of the Army. Approval of award requirements for Architect-Engineer contracts are set forth in § 590.604-4.

§ 590.604-2 Leases of Government property. Leases of Government property, regardless of amount, except as heretofore or hereafter may be delegated by the Secretary will be submitted for approval by the Secretary. Requests for approval will be addressed to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army.

§ 590.604-3 Construction and rehabilitation of installations. (a) *Chief, current procurement branch.* Awards of negotiated contracts for the construction and rehabilitation of installations for use in connection with the program to expand the United States Armed Forces will be submitted to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, for approval when (1) entered into by a Contracting Officer under the jurisdiction of the Chief of Engineers and the amount involved exceeds \$15,000,000 or (2) entered into by the continental armies or the Military District of Washington and the amount involved exceeds \$1,000,000.

(b) *Chief of Engineers.* Awards of negotiated contracts entered into by the Chief of Engineers for construction and rehabilitation of installations for use in connection with the program for expansion of the United States Armed Forces will be approved by the Chief of Engineers, or personally selected members of his organization designated by him so to do, when the amount involved does not exceed \$15,000,000. Such selected members are not authorized to redelegate this authority. Subject to any further instructions which may be issued by the Chief of Engineers, awards of contracts included in this paragraph amounting to less than \$100,000 do not require approval of higher authority.

(c) *Continental Army Commanders.* Awards of negotiated contracts entered into by the continental armies or the Military District of Washington for construction and rehabilitation of installations for use in connection with the program for expansion of the United States Armed Forces will be approved personally by continental Army Commanders or their Deputies, or the Commanding General of the Military District of Washington or his Deputy when the amount involved exceeds \$250,000 but does not exceed \$1,000,000. Awards of such contracts may be approved personally by subordinate commanders or their deputies, provided that such subordinate commanders or their deputies have been granted such authority personally by the respective Army Commander or the Commanding General of the Military District of Washington, when the amount involved exceeds \$100,000 but does not exceed \$250,000. Continental Army Commanders and the Commanding General of the Military District of Washington may also personally select alternates for the subordinate commanders to exercise this authority personally.

(d) *Commanding Generals of Major Overseas Commands.* Awards of negotiated contracts entered into by major overseas commands for the construction and rehabilitation of installations for use in connection with the program for expansion of the United States Armed Forces will be submitted to the Commanding Generals of major overseas commands for approval when the amount exceeds \$1,000,000. The authority to approve awards of such contracts amounting to \$1,000,000 or less may be delegated by Commanding Generals of major overseas commands to the extent deemed necessary to selected individuals within their commands. Such selected individuals are not authorized to redelegate this authority.

§ 590.604-4 Architect-Engineer contracts. (a) Awards of Architect-Engineer contracts under which the Government is to acquire a finished design job or engineering report, including all required drawings, plans, and specification, and under which there is little, if any, direct Government supervision of the contractor, and the fee is based upon the results to be accomplished, will be submitted to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, for approval, except that until June 30, 1951 (1) the Chief of Engineers and such other officers and individuals as he may personally designate to procure such services, under the provisions of the act of August 2, 1946 Public Law 600, 79th Cong.; 5 U. S. C. 55a), may approve such awards when the contract amount does not exceed \$500,000, and (2) the following major oversea commanders: Commanding General, United States Army, Europe; Commander-in-Chief, Far East and Commanding General, United States Forces, Austria, and such other officers and individuals, as each may personally designate, to procure such services, under the provisions of the act of August 2, 1946 Public Law 600, 79th Cong.; 5 U. S. C. 55a), may approve such awards when the contract amount does not exceed \$300,000.

(b) Awards of Architect-Engineer contracts for services other than those described in paragraph (a) of this section will be submitted for approval of the Secretary, except that until June 30, 1951 (1) the Chief of Engineers and such other officers and individuals as he may personally designate to procure such services, under the provisions of the act of August 2, 1946 (Public Law 600, 79th Cong.; 5 U. S. C. 55a) may approve such awards when the contract amount does not exceed \$500,000, and (2) the following major oversea commanders: Commanding General, United States Army, Europe; Commander-in-Chief, Far East and Commanding General, United States Forces, Austria, and such other officers and individuals, as each may personally designate, to procure such services, under the provisions of the act of August 2, 1946, *supra*, may approve such awards when the contract amount does not exceed \$300,000. Requests for approval, except those which may be approved under (1) or (2) of this paragraph, will be addressed to the Chief, Current Procurement Branch, Assistant

Chief of Staff, G-4, Department of the Army.

§ 590.604-5 Research and development contracts—(a) *Chief, Current Procurement Branch.* Awards of negotiated contracts for research and development within the scope of an approved research and development project will be submitted to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, for approval when the total contract amount involved exceeds \$100,000.

(b) *Heads of technical services.* Awards of negotiated contracts for research and development within the scope of an approved research and development project will be approved personally by heads of technical services or their deputies when the amount involved exceeds \$25,000 but does not exceed \$100,000.

(c) *Chiefs of Field Purchasing Offices.* Awards of negotiated contracts for research and development within the scope of an approved research and development project when the amount involved does not exceed \$25,000 may be approved personally by the chief or acting chief of an appropriate field purchasing office, provided that such chief or acting chief has been granted such authority by his head of technical service personally. Heads of technical services may also select personally alternates for the chiefs of field purchasing offices to exercise this authority personally. Subject to any further instructions which may be issued by the head of a technical service, contracts included in this paragraph amounting to less than \$1,000 do not require approval by higher authority.

§ 590.604-6 Utility service contracts. The Chief of Engineers, acting for the Secretary of the Army, is the Department of the Army Power Procurement Officer. The Chief of the Repairs and Utilities Division, Office, Chief of Engineers, is the Deputy Department of the Army Power Procurement Officer. The purchase of utility services is governed by SR 420-470-1 (special regulations governing utilities contracts), as changed. The following utility service contracts and modifications entered into within the United States, its territories and possessions, shall be submitted for approval to the Department of the Army Power Procurement Officer (Office of the Chief of Engineers), including the information required by § 590.605 (b)—

(a) Contracts or modifications of existing contracts for electric service where the service to be procured involves a demand of 500 kilowatts or more.

(b) Modifications of electric service contracts where the basic contract, or as it may have been modified previously is for 500 kilowatts or more, or where the modification increases the basic contract with any previous modifications thereof to 500 kilowatts or more, or where the basic contract use may have increased automatically to 500 kilowatts or more.

(c) All other utility service contracts where the service to be procured is of an estimated cost of \$10,000 per year or more; contract modifications where the basic contract, or as it may have been modified previously, entails an estimated

cost of \$10,000 a year or more; or where the modification increases the estimated annual cost under the basic contract with any previous modifications thereof to \$10,000 a year or more; or where the basic cost may have increased automatically to \$10,000 a year or more; or which contain a provision that they are entered into subject to the approval of the Department of the Army Power Procurement Officer and will not be binding until so approved.

(d) Contracts and modifications thereto for utility services which provide that they are entered into subject to the approval of the Department of the Army Power Procurement Officer and will not be binding until so approved.

(e) All utility service contracts which deviate from approved contract forms.

§ 590.604-7 Negotiated contracts in general. Award approvals required for all negotiated contracts for supplies, services or construction, not included in §§ 590.604-1 through 590.604-6 are as indicated below.

(a) *Chief, Current Procurement Branch.* Awards of negotiated contracts not included in §§ 590.604-1 through 590.604-6, except as otherwise specifically delegated in writing, will be submitted to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, for approval when (1) the amount exceeds \$5,000,000 and the contract is being entered into by a Contracting Officer under the jurisdiction of a technical service, or (2) the amount exceeds \$100,000 and the contract is being entered into by a Contracting Officer not under the jurisdiction of a technical service.

(b) *Heads of technical services.* Heads and acting heads of technical services are authorized to approve awards of negotiated contracts not included in §§ 590.604-1 through 590.604-6 in amounts not in excess of \$5,000,000. This authority may be redelegated by heads of technical services to the extent deemed necessary to personally selected members of their organizations. Such selected members are not authorized to redelegate this authority. Subject to any further instructions which may be issued by the chief of a technical service, contracts included in this paragraph amounting to less than \$100,000 do not require approval by higher authority.

§ 590.604-8 Major oversea commands. The authority, set forth in § 592.604-7 (a), of the Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, Department of the Army, to grant approval of certain awards of contracts is delegated to, and will be exercised by, Commanding Generals of major oversea commands for those contracts entered into by Contracting Officers under their jurisdiction. This authority may be redelegated by Commanding Generals of major oversea commands to the extent deemed necessary to personally selected personnel of their headquarters and subordinate commands or offices. Such selected personnel are not authorized to redelegate this authority.

§ 590.604-9 Modifications of contracts. Any supplemental agreement,

change order, or any other type of modification of a contract coming within the purview of §§ 590.604-1 through 590.604-5 and 590.604-7, which has the effect of increasing the original contract price so that the total amount exceeds the monetary limitation beyond which the Head of the Procuring Activity is authorized to approve the award of a contract will be submitted to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, for approval.

§ 590.604-10 Exigency and competition impracticable. Requests requiring approval of higher authority of contracts or awards of contracts negotiated under the authority of §§ 402.202 and 592.202 of this title (Public Exigency) may be submitted by telegraph or radio. In addition to the information required by § 590.605, requests for approval of awards of contracts negotiated under the authority of §§ 402.210 and 592.210 of this title will set forth the specific grounds upon which impracticability of competition was based.

§ 590.604-11 Contract review. At least one competent person, whether or not presently assigned to such office, will be assigned to the duty of reviewing in an advisory capacity all contracts prior to contract approval by the subordinate commanders or chiefs of field offices. In those instances wherein this is impracticable this provision may be waived upon determination made to that effect by the army commander, major oversea commander, Commanding General, Military District of Washington, or the head of a technical service, as appropriate.

§ 590.604-12 Approval clause. If approval of a contract, supplemental agreement, or change order by any officer or official of the Army Establishment other than the Contracting Officer is required pursuant to this Procedure (a) the "Approval of Contract" clause set forth in § 406.105-2 of this title will be included, (b) all changes and deletions will have been made before such approval is requested, and (c) the contract will not be valid until such approval has been obtained.

§ 590.605 Information to be furnished when requesting approval of contracts or awards—(a) Information required by the Chief, Current Procurement Branch. Requests for approval of contracts or awards of contracts, including supplemental agreements, change orders, or other modifications, referred to in §§ 590.604-1 through 590.604-5 and 590.604-7, will include the following information in accordance with the particular type of contract being entered into, in the order shown and to the extent practicable in the particular procurement. (Requests for approval of contracts or awards, including supplemental agreements, change orders, or other modifications, will be submitted in sufficient copies to assure that they will be received in quadruplicate in the Current Procurement Branch, Office, Assistant Chief of Staff, G-4, Department of the Army.)

(1) Name and address of contractor.

(2) Location of plant where contract is to be performed.

(3) Contract number, if assigned. (The number of the supplemental agreement, change order, or modification, in addition to the basic contract number will be shown, if applicable.)

(4) Supplies or services being procured, showing quantities, unit costs, and total cost. (If request for approval is for a supplemental agreement, change order, or other modification, include the amount of the basic contract and the amount of each change made to date, by whom approved, date of such approval, and the cumulative total.)

(5) Contract placement.

(i) Cite authority under which negotiated.

(ii) If award is being made without competition, state justification therefor.

(iii) Number of companies invited to submit proposals.

(iv) Total number of responsive quotations received, plus number of incomplete or unresponsive quotations.

(v) If it is proposed to make the award to other than the low offeror or offerors, give complete reasons therefor.

(vi) Comparison of all offers received for each item by company, item, quantity, and unit price.

(6) Prices paid on last previous procurement.

(i) Date.

(ii) Quantity.

(iii) Unit price.

(iv) Justification for increase in price, if applicable.

(7) Current market price, if applicable, plus or minus adjustments for packing, changes from commercial article, etc.

(8) Realistic cost breakdown, showing:

(i) Amount of estimated material (including percentage of material handling expense and estimated total amount).

(ii) Amount of estimated labor (estimated number of hours for each class, cost per hour for each class, and total for each class).

(iii) Percentage and amount of labor overhead for each class of labor.

(iv) Estimated total amount for special tools, dies, jigs, etc., and statement as to the special tooling clause to be included in the contract.

(v) Estimated amount of other direct costs, other than facilities, subcontracting, purchased parts, and "off-the-shelf" items. (List separately each item amounting to 5 percent or more of the total estimated cost.)

(vi) Estimated amount of other indirect costs. (List separately each item amounting to 5 percent or more of the total estimated cost.)

(vii) Percent of cost and total general and administrative expense.

(viii) Total (excluding facilities, subcontracting, purchased parts, "off-the-shelf" items, profit, or fixed-fee).

(ix) Percent of and total profit on cost or percent of and total fixed-fee.

(x) Names and addresses of all subcontractors and estimated amount to be awarded to each subcontractor when subcontracts are estimated to amount to

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either \$25,000 or more, or 5 percent or more, of the total estimated cost of the prime contract.

(xi) Estimated total amount of purchased parts.

(xii) Estimated total amount of "off-the-shelf" items to be billed at prices which include profit.

(xiii) Percent of and total general and administrative expense on subcontracting, purchased parts, and "off-the-shelf" items.

(xiv) Percent of and total profit or fixed-fee on subcontracting, purchased parts, and "off-the-shelf" items.

(xv) Estimated total amount of facilities to be procured.

(xvi) Total estimated definitive contract amount.

(xvii) Form of price redetermination or escalation clause to be included in the contract.

(xviii) Percent of maximum upward revision under price redetermination or escalation clause.

(9) Amount of Government estimate of costs in form shown in (8) above.

(Note: All information listed in (6), (7), (8) and (9) need not be furnished in each case if determined by the Contracting Officer to be inapplicable to the procurement being effected.)

(10) Number of contract form to be used.

(11) List any deviations from standard or approved contract clauses, and reasons for such deviations.

(12) List all Patent and Copyright clauses to be included in the contract.

(13) Brief description of delivery or performance schedule.

(14) List all estimated royalty payments, if any, and to whom to be paid.

(15) Estimated amount of Federal excise tax to be paid per unit.

(16) Description and value of Government property to be furnished contractor.

(17) Statement as to whether the financial condition of the proposed contractor is considered satisfactory. If performance bond is to be furnished, state amount.

(18) Statement as to whether the past performance record of the proposed contractor is considered satisfactory. If contractor is engaged in current contract or contracts with the Procuring Activity concerned, state the estimated contract amount and status of deliveries.

(19) Funds to be expended.

(i) Total allocated.

(ii) Total obligated, exclusive of this contract.

(20) Priority of project or procurement involved.

(21) Statement as to whether the aggregate number of employees of the contractor, including its affiliates, is less than 500.

(22) Specifications under which procurement is being effected. (If other than authorized specifications, complete justification therefor.)

(23) In addition to the above, any pertinent data in the form of explanations, comparisons, or comments concerning the unusual phases of the procurement.

(b) Information required by the Department of the Army Power Procure-

ment Officer. Requests for approval of utility contracts and modifications referred to in § 590.604-6 will include the following information:

(1) Complete load data.

(2) Estimated maximum demand in kilowatts.

(3) Estimated average monthly demand in kilowatts.

(4) Estimated average monthly usage in kilowatt-hours.

(5) Estimated power factor.

(6) Similar applicable information for estimated usage of water, gas, sewage disposal, and steam contracts.

(7) Any other available pertinent information that will facilitate review, including but not limited to, analysis of available rates and charges, supporting data for estimates of demand and use, and difficulties experienced in negotiation.

§ 590.606 Distribution of contracts. Contracts will not be distributed until properly signed by all parties, and approved, if approval is required, and U. S. Standard Form 1036 (Statement and Certificate of Award) is attached in those cases where required. In the case of those contracts which require approval and such approval does not appear on the contract itself or the cover sheet, there will be attached a statement or certificate by the Contracting Officer that the award or the contract has been approved and the name, title, and office of the person by whom approved, together with a reference to the date thereof and/or to the administrative file containing the original approval. In the case of those contracts (whether numbered or unnumbered) made as a result of formal advertising, U. S. Standard Form 1036 will be executed and attached.

§ 590.606-1 Definitions. The following terms are used in connection with the distribution of contracts:

(a) *Signed number.* A signed number is the contractual instrument with the required signatures.

(b) *Authenticated copy.* An authenticated copy is a copy of the contractual instrument shown to be authentic by any one of the following:

(1) Certification as a true copy.

(2) Official seal, or

(3) Photostatic process.

The signatures on such copies may be either facsimile, stamped, or typed. In lieu of copying the signature of the parties, signing the contract or supplemental agreement and of the witnesses thereto, and the corporate certification or certificate, if any, as to the authority of the persons who signed the original for the corporate contractor, the Contracting Officer or his authorized representative may execute the following certificate on the copies furnished the Fiscal Office and the Financing Disbursing Office for their use:

"I certify that this is a true copy of the document properly signed and witnessed _____ and that the corporate cer-

(Date)
tification therein was properly executed."

(c) *Copy.* A copy is a copy of the contractual instrument, including the names of the contracting parties, but lacking authentication.

§ 590.606-2 Secret and confidential contracts. All instructions relating to distribution of contracts are subject to the provisions of Part 505 of this chapter, and all other current instructions governing the safeguarding and disclosing of information affecting the national security of the United States. Copies of secret or confidential contracts submitted to the General Accounting Office will be transmitted under two covers. In the case of lump sum (fixed price) contracts, each cover is to be addressed to the General Accounting Office, Army Audit Branch, Building 203, 4300 Goodfellow Boulevard, St. Louis 20, Missouri. In the case of cost-plus-fixed-fee contracts, each cover is to be addressed to Contract Service Section, Audit Division, General Accounting Office, Washington 25, D. C. The inner cover only will be marked "Personal Confidential."

§ 590.606-3 Numbered contracts. Subject to such special instructions as may be issued by the Head of the Procuring Activity concerned, numbered contracts will be distributed as follows:

(a) The original signed number of each lump sum (fixed price) contract will be forwarded to the General Accounting Office, Army Audit Branch, Building 203, 4300 Goodfellow Boulevard, St. Louis 20, Missouri. The original signed number of each cost or cost-plus-fixed-fee contract will be forwarded to the General Accounting Office, Washington 25, D. C., Attention: Contract Service Section, Audit Division. If a surety bond or bonds are required in support of a contract whether lump sum or cost-plus-fixed-fee, see § 599.108 of this chapter. When the contract covers purchases made for one or more of the other military departments of the Department of Defense, with payment to be made by the military department or military departments receiving the supplies or services, there also will be forwarded with the original signed number additional certified or photostatic exact copies of the contract in a number equal to the number of receiving military departments.

(b) The duplicate signed number will be filed with the Contracting Officer or as directed by the Head of the Procuring Activity concerned.

(c) The triplicate signed number will be forwarded to the contractor.

(d) An authenticated copy will be forwarded to the Disbursing Officer for his files.

(e) Additional authenticated copies or unauthenticated copies will be distributed as directed in appropriate Department of the Army publications or by the Head of the Procuring Activity concerned. Such copies may be distributed prior to the distribution of the signed numbers, provided each is plainly marked as an "Advance Copy," and other adequate safeguards are taken to insure that there will be no improper fiscal charges due to contracts not being carried through to execution.

§ 590.606-4 Unnumbered contracts. (a) The original signed number will be furnished the Disbursing Officer and will be attached to the voucher on which payment is made and will accompany such voucher to the General Accounting Office, Army Audit Branch, Building 203, 4300 Goodfellow Boulevard, St. Louis 20, Missouri. If a surety bond or bonds were required in support of a contract, whether lump sum or cost-plus-fixed-fee, a suitable notation, by rubber stamp or otherwise, that a bond has been executed (e. g., "Performance Bond Executed"; "Payment Bond Executed") will be placed on the contract for the information of the General Accounting Office.

(b) The duplicate signed number will be forwarded to the contractor.

(c) An authenticated copy will be furnished the Disbursing Officer for his files.

(d) Additional copies will be prepared and distributed as directed in appropriate Department of the Army publications or by the Head of the Procuring Activity concerned. Such copies may be distributed prior to the distribution of the signed numbers, provided each is plainly marked as an "Advance Copy," and other adequate safeguards are taken to insure that there will be no improper fiscal charges due to contracts not being carried through to execution.

§ 590.606-5 Bread contracts. One copy of each contract for the purchase of bread which covers a period of 30 days or longer, and provides for an average daily delivery in excess of 300 pounds, will be forwarded to the Office of The Quartermaster General (Attn.: Subsistence Branch, Supply Division).

§ 590.606-6 Supplemental agreements and change orders. Signed numbers and copies of supplemental agreements and change orders will be distributed in the same manner as is prescribed for the contracts to which they pertain and the Contracting Officer will note on his retained copy of the supplemental agreement or change order the date on which the contractor's number was delivered or mailed to him.

§ 590.606-7 Purchases under contracts of other military departments and other government agencies.

(a) Delivery orders covering such purchases will be distributed in accordance with § 590.606-4.

(b) The Head of the Procuring Activity concerned will secure compliance with all special instructions of the respective agencies which make the contracts.

(c) Vouchers submitted to the General Accounting Office, Army Audit Branch, may relate to less than all of the items covered by the delivery order. If the original signed number of the delivery order has not already been so submitted, it will be submitted with the first voucher; and when vouchers are submitted covering subsequent payments, a reference will be made to the first voucher. The reference should contain the date on which the invoice covered by the first voucher was paid and the name of the Disbursing Officer by whom such payment was made.

§ 590.606-8 Distribution of procurement contracts to the Army Audit Agency. (a) Contracting Officers of the Army Establishment will distribute authenticated copies of signed contracts and other necessary information as enumerated below to the regional offices of the Army Audit Agency in order that the Army Audit Agency may plan for the performance of the independent audits.

(1) Four copies of all cost (or cost-sharing), cost-plus-a-fixed-fee, and time and materials contracts (including letter contracts); also four copies of all changes, amendments, and supplements to such contracts.

(2) Four copies of any other type of negotiated contract (including letter contracts), where the total compensation to be paid the contractor is based, in whole or in part, on the actual costs incurred, the quantity of work or service performed, the time element in performing the work or service, or on other similar variable factors and the Government has the contractual right of audit; also four copies of all changes, amendments, and supplements to such contracts.

(3) Three copies of all letter contracts and fixed-price contracts which provide for price redetermination, price escalation, advance payments, partial payments, or Government furnished property; also three copies of all changes, amendments, and supplements to such contracts.

(b) In addition to the contractual documents required by paragraph (a) of this section, the Contracting Officer will forward promptly an original and one copy of all cost statements, financial data, and other information furnished by the contractor in accordance with each contract referred to in the above subparagraphs, or requested by the Contracting Officer. The copy of the cost statements and other data furnished will be retained by the Army Audit Agency and filed with the audit work papers, and the original returned at the time of submission of the audit report or at the time the Army Audit Agency determines an audit is not to be initiated.

(c) Distribution of the above indicated contractual documents and supplemental information will be made by the procuring office to the audit regional office of the area in which the performance will be accomplished. Special arrangements may be made by agreement between a procuring office and the audit agency.

(d) Distribution will not be made to regional offices of the Army Audit Agency of contracts entered into by the technical services or army commands for the purchase of services not covered in paragraph (a) of this section.

§ 590.607 Audits of procurement contracts by the Army Audit Agency. Requirements and procedures pertaining to audits of procurement contracts are set forth in §§ 590.607-1-590.607-3.

§ 590.607-1 Cost-reimbursement type contracts—(a) Mandatory audits. The Army Audit Agency will schedule and perform audits on the types of contracts included under § 590.606-8 (a) (1).

(b) Differences and disputes. (1) Where questions arise during the course of an audit of a cost-reimbursement type contract which appear to be in need of either amplification, substantiation, or clarification by the Contracting Officer prior to the submission of the formal report, the Auditor, without delay, will attempt to obtain such amplification, substantiation, or clarification from the Contracting Officer. The Contracting Officer, in turn, will cooperate fully in the prompt resolution of any such problem.

(2) If the audit referred to above discloses any costs which, in the Auditor's opinion, do not appear to be reimbursable under the terms of the contract, or because they appear to be excessive or otherwise unreasonable, the Auditor will recommend such costs for nonacceptance. If the Contracting Officer does not concur in the recommendations, he will, within 5 days after receipt thereof, advise the Regional Auditor in writing of his reasons for nonconcurrence and, pending resolution of differences, will not approve the disputed items for payment in whole or in part. The costs on which the Regional Auditor and the Contracting Officer are in agreement may be paid pending disposition of the differences. The Regional Auditor will consider the comments of the Contracting Officer and will reappraise his original recommendations in the light thereof. If the Regional Auditor believes that his original recommendations should be changed, he will revise or supplement his recommendations accordingly. However, should the Regional Auditor still believe that his original recommendations are proper, he will prepare and submit to the Contracting Officer any additional information and data in support thereof as he may consider pertinent under the circumstances. In either case the Regional Auditor's written reply will be transmitted within 5 days of receipt of the Contracting Officer's comments.

(3) Generally any differences in opinion with respect to allowability of costs should be capable of resolution at the Contracting Officer and Regional Auditor level. However, if agreement cannot be reached after the exchange of correspondence required in subparagraph (2) of this paragraph, the Contracting Officer, within 5 days after receiving the Regional Auditor's reply to his previous comments, will transmit the complete file direct to the Head of the Procuring Activity involved, forwarding a copy of the transmittal letter to the Regional Auditor. Upon receipt of copy of the transmittal letter, the Regional Auditor will forward his complete file, including the audit work papers, to the Chief, Audit Division, Office of the Comptroller of the Army, sending a copy of his transmittal letter to the Contracting Officer.

(4) Within 7 days after receipt of the files, the designated representative of the Head of the Procuring Activity concerned and the designated representative of the Comptroller of the Army, acting as an informal board, will make a final decision on the items in dispute and jointly will advise the Contracting Officer direct with respect thereto with an information copy to the Regional

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Auditor. All decisions of the informal board will have the written approval of the Head of the Procuring Activity concerned and of the Comptroller of the Army.

(5) In the event that the Head of the Procuring Activity and the Comptroller of the Army are unable to agree, the dispute will be referred direct to the Under Secretary of the Army, who will render a final decision on the issues involved.

(6) Determination reached by the informal board will have the effect of a directive and will be so recognized by both the Contracting Officer and the Regional Auditor. Decisions by the Under Secretary of the Army will also be in the form of a directive and will have the same effect. Payment will then be made in accordance with the decisions reached. Such decisions do not preclude a contractor from seeking redress under any applicable provisions of the contract.

§ 590.607-2 Fixed-price contracts—
(a) *When audits will be performed.* Audits of cost data submitted by contractors in connection with the negotiation of or revision of prices (or settlements) under fixed-price contracts will be performed—

(1) When requested by the Contracting Officer. As a matter of policy, Contracting Officers should request and obtain audits of actual or estimated costs in connection with negotiation of prices under all fixed-price contracts where cost is an important element to be considered, except where—

(i) Contracts are not large enough to justify the cost of an audit, or

(ii) Special contingencies may arise, such as time limitations in establishing prices. Exceptions to audit, as outlined above, shall be held to the minimum.

(2) Whenever the Regional Auditor deems it advisable (provided the Government has a contractual right of audit) after giving full consideration to the amount involved, the nature and acceptability of the cost data furnished by the contractor, knowledge (or lack thereof) of the contractor's accounting policies and procedures, the adequacy of the contractor's cost system, unusual circumstances that might adversely affect the Government's interest, or any other available information that would be of value in arriving at the decision. The Contracting Officer will be advised promptly of any such decision by the Regional Auditor, and the reasons therefor, no later than 10 days after receipt of any of the financial data set forth in § 590.606-8 (b).

(b) *Action required upon receipt of request for or the initiation of an audit.* Promptly upon receipt of the audit request set forth in paragraph (a) (1) of this section or when initiating an audit under paragraph (a) (2) of this section, but no later than 10 days after receipt of an audit request or receipt of the data set forth in § 590.606-8 (b), the Army Audit Agency will advise the Contracting Officer of the approximate date the audit will be started and within 5 days after the actual starting date, the Auditor will further advise the Contract-

ing Officer of the estimated date of submission of the audit report. In the event that conditions which arise during the performance of the audit indicate the audit report cannot be completed within the estimated period and in order not to delay unduly any needed payment of acceptable items of cost to the contractor, the Auditor will promptly advise the Contracting Officer of the cause of the extension of the estimated date of completion and will furnish a brief interim report indicating the amount which, in the Auditor's opinion, and subject to the Contracting Officer's approval may be provisionally paid at that time; in the case of pending pre-contract negotiations, the Contracting Officer may, in his discretion, proceed with negotiations without delay until completion of the audit report, should the situation so warrant.

(c) *Scope of audits.* The scope of each audit requested by a Contracting Officer will be the minimum required in the opinion of the Auditor under the circumstances to justify him in giving an opinion regarding the reasonableness and fairness of the contractor's claims regarding costs actually incurred or estimated to be incurred, either as a basis for actual contract settlement or for price negotiation, as the case may be. The scope of the audit will depend upon the Auditor's judgment regarding the contractor's financial and accounting policies and procedures, including the reliability of his cost system and internal controls; in no case will a detailed audit of transactions or price estimates be made beyond the extent necessary under the circumstances. Whenever the Auditor determines to expand the scope of auditing to include extensive detailed work, an explanation of the reasons therefor will be furnished in the audit report.

(d) *Action of contracting officer upon receipt of audit report.* Contracting Officers are primarily responsible for determination of prices negotiated under fixed-price contracts, including those containing price redetermination clauses. Audit reports on negotiated fixed-price contracts, while advisory only, are necessary and important in that they furnish Contracting Officers adequate information with which to negotiate fairly with the contractor's representatives, and must be fully considered. In accordance with the requirements of § 590.606-8 (a) copies of contractual documents reflecting the determination of prices or settlements must be furnished promptly by the Contracting Officer to appropriate regional officers of the Army Audit Agency.

(e) *Action of Army Audit Agency upon receipt of contractual documents indicating settlement of price redeterminations, etc.* Upon receipt of the contractual documents indicating revision of prices (or final settlements), the Army Audit Agency will evaluate the new prices in the light of the advisory audit report and other available information for overall reasonableness. A reaudit or reexamination of the contractor's accounts will not be performed. In those cases where the new prices appear largely dis-

proportionate to the information available, a report will be submitted through the Comptroller of the Army to the AC of S, G-4, GSUSA (Chief, Current Procurement Branch), for information and investigation, which office will take necessary corrective action, if deemed appropriate. The Comptroller of the Army will be furnished with information indicating disposition of the report.

§ 590.607-3 General—(a) Accounting counsel. Contracting Officers may utilize, and the Army Audit Agency will furnish accounting counsel at the request of the Contracting Officer, whenever the Contracting Officer determines that such counsel is desirable and appropriate in the negotiation of a contract either in its initial pricing stage or during or at the completion of its performance.

(b) *Reports of irregularities.* If the basis for an audit request, or if discovered in the course of an audit, information as to irregularities or unusual matters will be promptly furnished to the Auditor, or to the Contracting Officer, for appropriate consideration. Reports by the Auditor indicating suspicion of fraud will be furnished to the Contracting Officer who will be governed by § 590.303.

§ 590.608 Contractor's statement of contingent or other fees. The prescribed procedure with respect to obtaining information concerning contingent or other fees paid by contractors for soliciting or securing Government contracts is set forth below.

§ 590.608-1 Contracts subject to §§ 590.608 to 590.608-9—(a) Definition of contract. As used throughout §§ 590.608—590.608-9, the term "contract" means any contract for—

(1) The purchase of real property, personal property, or services (except services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis and except public utilities services by public utility companies);

(2) The construction or repair of public buildings or works;

(3) The lease of real or personal property for Government use; or

(4) The sale or lease of Government-owned real or personal property.

(b) *Applicability.* Sections 590.608—590.608-9 apply to every contract except a contract—

(1) Awarded pursuant to formal advertising in which the contract price at the time of award does not exceed \$25,000;

(2) Negotiated for perishable subsistence supplies in which the contract price at the time of execution does not exceed \$25,000; or

(3) Negotiated (other than for perishable subsistence supplies) in which the contract price at the time of execution does not exceed \$1,000.

§ 590.608-2 Form—(a) Definition. As used throughout §§ 590.608—590.608-9, the term "form" means U. S. Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract), which is prescribed for use.

(b) *Use of form.* The form shall be used without deviation in cases in which—

(1) Sections 590.608—590.608-9 require its use and

(2) The Contracting Officer desires to obtain information from contractors or prospective contractors with respect to whether they have employed or retained any company or person (other than a full-time employee) to solicit or secure contracts.

When, after use of the form, further information is required, it may be obtained in any appropriate manner.

(c) *Additional instruction.* See § 590.580 of this chapter.

§ 590.608-3 *Covenant Against Contingent Fees*—(a) *Procurement contracts.* Every contract, defined by § 590.608-1 (a) (1), (2), or (3), is required to contain the "Covenant Against Contingent Fees" clause set out in § 406.103-20 of this title.

(b) *Disposition contracts.* Every contract defined by § 590.608-1 (a) (4) will contain the following clause:

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to require the Contractor to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

§ 590.608-4 *Procurement and disposition by formal advertising.* Every invitation for bids shall contain the following representation checked in the appropriate box:

Bidder represents that he has, has not, employed or retained a company or person (other than a full-time employee) to solicit or secure this contract, and agrees to furnish information relating thereto as requested by the Contracting Officer.

(a) *Negative representation.* If the otherwise successful bidder makes such representation in the negative, the Contracting Officer may accept such representation and make the award in accordance with regularly established procedures.

(b) *Affirmative representation.* If the otherwise successful bidder makes such representation in the affirmative, the Contracting Officer, without delay in the making of the award in accordance with regularly established procedures, will request a completed form, executed in triplicate by such bidder.

(c) *Failure or refusal to make representation.* If the otherwise successful bidder fails to check the appropriate box, such failure will be considered a minor informality and, prior to award, such bidder will have an opportunity to check the appropriate box or otherwise to make such representation. A refusal by such bidder, after such opportunity has been afforded, will require rejection

of his bid. Such refusal will be reported to the Head of the Procuring Activity concerned or his duly authorized representative.

(d) *Failure or refusal to furnish form.* If the otherwise successful bidder fails or refuses to furnish a completed form upon request of the Contracting Officer, the matter will be referred to the Head of the Procuring Activity concerned or his duly authorized representative for instructions.

(e) *Action by Contracting Officer.* If the Contracting Officer, after award, believes that the otherwise successful bidder has made misrepresentations or has acted in a manner inconsistent with the "Covenant Against Contingent Fees" clause, he shall request (if he has not already received) a completed form from such bidder, and shall report the matter for determination by the Head of the Procuring Activity concerned or his duly authorized representative. If the Contracting Officer is satisfied that the completed form and any other available information does not evidence any action inconsistent with the "Covenant Against Contingent Fees" clause or any misrepresentations, he may accept the form, without further action with respect thereto.

§ 590.608-5 *Procurement or disposition by negotiation.* In the course of the negotiation of every contract, the contractor, prior to the execution of such contract, will be required to file a signed statement containing a representation identical with that required by § 590.608-4 and a completed form where such representation is in the affirmative. Otherwise, the procedures described in § 590.608-4 shall be followed except that no contract shall be executed if a determination is required by the Head of the Procuring Activity concerned or his duly authorized representative. If the Contracting Officer considers that the interest of the Government will be prejudiced by the suspension of negotiations pending such determination, he shall so advise the Head of the Procuring Activity concerned and request immediate instructions with respect thereto.

§ 590.608-6 *Statement instead of form.* In lieu of the requirement of a completed form in each case where a bidder or proposed contractor has made an affirmative representation by checking the appropriate box, it is considered administratively desirable to permit such bidder or proposed contractor to furnish one completed form to each purchasing office with which it deals. Accordingly, the schedule of every invitation for bids shall contain a provision as follows:

If the bidder, by checking the appropriate box provided therefor in his bid, has represented that he has employed or retained a company or person (other than a full-time employee) to solicit or secure this contract, he may be requested by the Contracting Officer to furnish a complete Standard Form 119, "Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract." If the bidder has previously furnished a completed Standard Form 119 to the office issuing this invitation for bids, he may accompany his bid with a signed state-

ment, (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation for bids or contract, if any, in connection with which such form was submitted, and (c) representing that the statements in such form are applicable to this bid. In the course of negotiating a contract the Contracting Officer may accept a similar statement from the proposed contractor.

§ 590.608-7 *Authority of Head of a Procuring Activity.* The Head of a Procuring Activity or his duly authorized representative, shall, in any case forwarded by a Contracting Officer pursuant to §§ 590.608—590.608-9, take or cause to be taken one or more of the following actions as appropriate:

(a) If award, or execution of a negotiated contract, has not occurred, determine whether the bidder or proposed contractor should be rejected.

(b) Recover the amount of any improper fee.

(c) Annul contract, if awarded or executed.

(d) Determine the future eligibility, as a contractor, of the bidder or proposed contractor, in accordance with § 590.303.

(e) Determine whether the case should be referred in accordance with § 590.303 with respect to determining matters of fraud.

§ 590.608-8 *Presentation of representations and completed forms.* The Contracting Officer shall preserve at least one executed copy of any representation made or completed form, or statement in lieu of form furnished, together with any other records for the purpose of making such reports as may be required.

§ 590.608-9 *Contracts in foreign countries.* In effecting procurement outside the United States, its territories and possessions, mandatory use of the form is not required.

SUBPART G—SMALL PURCHASES PROCEDURE

§ 590.700 *Scope of subpart.* This subpart sets forth the small purchases procedure for the Army Establishment. It implements subchapter A, chapter IV of this title generally rather than a specific part or section thereof.

§ 590.701 *Definition.* Small purchases may be defined as purchases of supplies or services (other than personal) in an amount not exceeding \$1,000.

§ 590.702 *Formal advertising.* Small purchases may be effected by the use of formal advertising (Parts 401 and 591 of this title); that is, by the use of U. S. Standard Form 33 (Invitation, Bid, and Acceptance) or other appropriate form, when the Contracting Officer determines that it is to the interest of the Government to obtain maximum competition by means of formal advertising.

§ 590.703 *Negotiation.* Section 2 (c) (3), Armed Services Procurement Act of 1947, authorizes the negotiation of purchases and contracts without advertising if the aggregate amount involved does not exceed \$1,000. Section 2 (c) (1) of the Armed Services Procurement Act of 1947, however, will be used as authority to negotiate purchases and contracts not exceeding \$1,000 during a period of

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national emergency declared by the President or by Congress and when the Secretary has made a determination in accordance with §§ 402.201 and 592.201 of this title to negotiate under section 2 (c) (1). §§ 402.203 and 592.203 of this title set forth additional requirements and instructions with respect to purchases not exceeding \$1,000 which are applicable even though the procurement is negotiated under the provisions of §§ 402.201 and 592.201 of this title, except for the citation of statutory authority.

§ 590.704 Methods of consummating small purchases by negotiation. (a) Small purchases effected by negotiation will be consummated by the method requiring the use of the Order and Voucher for Purchase of Supplies or Services Other Than Personal (DA AGO Form 383), except (1) as otherwise excluded by this subpart, and (2) when, in the opinion of the Contracting Officer, local circumstances make the use of this method impracticable. Maximum use, however, will be made of this method in all possible instances. This method, requiring the use of DA AGO Form 383, is set forth in detail in § 590.705.

(b) In those instances where the method requiring the use of DA AGO Form 383 cannot be used, small purchases effected by negotiation may be consummated by use of one of the following methods:

- (1) Government's Order and Contractor's Acceptance (WD Form 47).
- (2) Purchase Order (WD Form 18).
- (3) Other appropriate authorized forms.

§ 590.705 Order and Voucher for Purchase of Supplies or Services Other Than Personal (DA AGO Form 383).

(a) The Order and Voucher for Purchase of Supplies or Services Other Than Personal (DA AGO Form 383) is used only in connection with purchases which do not exceed \$1,000 and the purpose of the form is to effect such purchases in the simplest manner. It provides in one document a purchase (or delivery) order, a receiving and inspection report, a property voucher, and when supported by a vendor's invoice, a payment voucher. The use of this form and DA AGO Form 383b (continuation sheet) according to the procedure herein will simplify purchasing procedure, will increase efficiency by simple actions, will effect economy in personnel and overhead, will reduce quantities of forms used and attendant paper work, and will expedite payments to vendors.

(b) Form 383 is comprised of the following parts: 383, part 1; 383c, parts 2 through 10; 383a is the reverse of all 10 parts. Form 383b (continuation sheet) is comprised of the following parts: 383b, part 1; 383d, parts 2 through 10. These forms are being furnished as 10-part manifold forms, snap-out construction.

§ 590.705-1 Approval of the Comptroller General. The Comptroller General of the United States has authorized the use in the Department of the Army of DA AGO Forms 383 and 383b (revised July 1, 1949) under the following conditions:

(a) These forms shall be limited to purchases which do not exceed \$1,000.

(b) These forms will not be used where more than one payment is initially expected to be made. When partial payments through unforeseen contingencies later become necessary, the total number of all payments will not exceed four.

§ 590.705-2 Use of Form 383 as a purchase order—(a) General. Form 383 is authorized for use at stations, depots, and other procuring offices in procuring any supplies or services (other than personal) where:

- (1) The amount of the purchase order does not exceed \$1,000.
- (2) Only one payment and one delivery are initially expected to be made.
- (3) No special contract form is required.

(4) No special contract clauses are necessary. (See § 590.705-10 (f).)

(b) *Authority for negotiation.* (1) Although the purchase of supplies by negotiation may be authorized by some other subparagraph of section 2 (c), Armed Services Procurement Act of 1947, when the amount thereof does not exceed \$1,000, section 2 (c) (3) will be utilized as the authority, except as indicated in subparagraph (2) of this paragraph. For example, the purchase of medical supplies by negotiation is authorized by section 2 (c) (7), but if the aggregate amount does not exceed \$1,000, section 2 (c) (3) will be utilized as the authority, except as indicated in subparagraph (2) of this paragraph.

(2) During a period of a national emergency declared by the President or by Congress and when the Secretary has made a determination in accordance with §§ 402.201 and 592.201 of this title, section 2 (c) (1) of the Armed Services Procurement Act of 1947 will be used as authority to negotiate purchases and contracts when the amount does not exceed \$1,000. During such periods contracts will bear the citation prescribed in subparagraph (3) of this paragraph.

(3) During the period of the present national emergency, declared by the President on December 16, 1950, contracts for amounts not exceeding \$1,000 will cite as authority, section 2 (c) (1), Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.) and Presidential Proclamation 2914. DA AGO FORM 383 will be modified accordingly.

§ 590.705-3 Use of Form 383 as a delivery order. (a) Form 383 is authorized for use in making purchases under all "open end" or "term" contracts which provide that deliveries will be made upon call of contracting officers, where:

- (1) The aggregate amount of the delivery order does not exceed \$1,000.
- (2) Only one payment and one delivery is initially expected to be made.

(b) Proper reference will be made to the basic purchase agreement against which the purchase is made in the space provided.

§ 590.705-4 Use of Form 383 as a receiving and inspection report. (a) Form 383 is designed for use as a tally-in, an inspection report, and a receiving report.

(b) When inspection and/or acceptance is to be other than at destination, the place of such inspection and/or acceptance will be shown in the "Supplies or Services" column on the form. (See clause 6 on reverse of Form 383.)

(c) Upon receipt of the items provided for in the order, the accountable officer or his authorized representative will complete the following on Form 383:

- (1) Quantity accepted (face of form).
- (2) Date received (reverse of form).
- (3) Delivered by (reverse of form).
- (4) Stock record account voucher number (reverse of form).
- (5) Signature with grade and designation (reverse of form).
- (6) Account serial number (reverse of form), and
- (7) Date signed (reverse of form).

The accountable officer will request disposition instructions from the contracting officer for nonacceptable items and overages.

(d) If inspection is made other than at destination, appropriate copies of Form 383 will be furnished to the inspection office. Accomplished inspection reports will be transmitted to the consignee unless otherwise indicated in each specific case by the Contracting Officer.

(e) The accomplished receiving report will be forwarded within 24 hours after receipt of shipment.

§ 590.705-5 Use of Form 383 as a vendor's invoice.

(a) Special care will be exercised to have each vendor follow the instructions on Form 383 regarding preparation of vendor's invoice.

(b) When it is desired to utilize Form 383 as a vendor's invoice, the following certificate will be typed or stamped in the "Supplies or Services" column on the original copy for the General Accounting Office, copy for the Disbursing Officer, and copy for the Fiscal Officer: "I certify that the above bill is correct and just and that payment therefor has not been received." Only the original will be signed by the vendor.

§ 590.705-6 Use of Form 383 as a voucher—(a) One payment. Form 383 will be completed and processed as any other payment voucher.

(b) *More than one payment.* (1) Where more than one payment becomes necessary, original Form 383 will be completed for those supplies or services accepted and will be processed for payment in the normal manner.

(2) Subsequent payments not exceeding three will be made on additional Forms 383 citing same order number as the original and indicating in the "Order No." block of the Form 383 the number of the partial shipment (i. e., 1st partial, 2d partial, and final). Prior to or at the time of processing original Form 383 (mentioned in subparagraph (1) of this paragraph) for payment, an additional Form 383 will be prepared, setting forth the balance of the undelivered supplies and distributed in the normal manner, except that no copy will be distributed to the vendor. The above procedure will be repeated until final delivery is received. A citation to the name of the Disbursing Officer, period of account, and

Disbursing Officer's voucher number will be made to the original and subsequent vouchers on subsequent vouchers respectively. For example, first subsequent voucher will cite original voucher, second subsequent voucher will cite original voucher and first subsequent voucher, etc. Each voucher will be a complete transaction within itself and the cross reference will allow the General Accounting Office to reconcile the entire purchase.

(c) Standard Form 1034, Revised (Public Voucher for Purchase of Supplies and Services Other Than Personal) will not be used in connection with Form 383 and vice versa.

§ 590.705-7 Use of Form 383b. (a) Form 383b is the continuation sheet for Form 383.

(b) It will be used when the space for the list of articles or services on Form 383 is not sufficient for the listing of all the supplies or services (other than personal) covered by the purchase.

(c) Appropriate copies will be attached securely to the corresponding copies of Form 383 and distribution will be accomplished with Form 383.

§ 590.705-8 Use of Forms 383c and 383d. (a) Form 383c (yellow) is the memorandum copy for Form 383.

(b) Form 383d (yellow) is the memorandum copy for Form 383b.

§ 590.705-9 Distribution of copies of Form 383. (a) The copies of Form 383 which are numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 at the bottom of the form, will be distributed as follows and as shown on the flow chart in § 590.705-13.

(1) *Copy 1 (original).* General Accounting Office (white).

(2) *Copy 2.* Finance Officer (yellow).

(3) *Copy 3.* Vendor (yellow).

(4) *Copy 4.* Contracting Officer (yellow).

(5) *Copy 5.* Fiscal Officer (yellow).

(6) *Copy 6.* Fiscal Officer (yellow).

(7) *Copy 7.* Accountable Property Officer (yellow).

(8) *Copy 8.* Receiving report (yellow).

(9) *Copy 9.* Army Audit Agency (yellow).

(10) *Copy 10.* Optional local use (yellow).

Additional copies of Forms 383c and 383d, when authorized in each specific case by the appropriate Head of a Procuring Activity, will be prepared on yellow paper.

(b) Reference is made to the flow chart in § 590.705-13, which indicates the processing of the several copies of Form 383.

§ 590.705-10 General instructions. The following general instructions are applicable whether the form is used as a purchase order or as a delivery order:

(a) The "Item No." column will be used for assigning a reference or a sequence number to the supplies or services (other than personal) being procured.

(b) Such numbers (stock number, part number, etc.) as are necessary for identi-

fication will be included as a part of the nomenclature of the supplies being procured.

(c) Local reproduction of Forms 383, 383a, 383b, 383c, and 383d, is not authorized.

(d) When more than one payment or one delivery are initially contemplated, Form 383 will not be used, but the purchase will be effected by the use of other appropriate form.

(e) Form 383 will not be given a contract number under any circumstances. The "order number" space provided is for such local identification as is necessary.

(f) The contract clauses printed on the reverse of Form 383 and on Form 383a are deemed sufficient for all purchases accomplished by use of Form 383. In the event additional contract clauses or deviations are required for specific purposes, prior approval for their use will be obtained from the Assistant Chief of Staff G-4, Department of the Army (Chief, Current Procurement Branch). Approval is granted to delete the following clauses from Form 383a in effecting procurement outside the United States, its territories and possessions:

(1) Convict Labor.

(2) Nondiscrimination in Employment.

(g) These procedures are deemed sufficient for all purchases accomplished by use of Form 383. In the event that additional forms or instructions are necessary for attachment to Forms 383, 383a, 383b, 383c, and 383d, prior approval will be secured from the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch). The attaching of vendor's invoices which are required for payment; specifications, drawings, packaging and marking instructions, and other similar data which are considered an adjunct or a part of the description of the supplies listed on the face of Form 383 or 383b are permissible without approval. Similarly, the attachment of foreign language translations for use of this form in foreign countries, is authorized, provided both the standard forms and the foreign language translations contain a statement that in the event of a disagreement in the text of the English and foreign translations, the English text will govern.

(h) Such supplemental operating procedures as may be necessary in connection with routing of copies of Form 383 by a purchasing office may be issued by that purchasing office if deemed essential. No additional supplemental operating or similar procedures or instructions other than those contained herein will be issued by Heads of Procuring Activities without prior approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

(i) Form 383 will not be utilized for the acceptance of bids after formal advertising.

(j) Supplemental agreements and change orders, other than notice of termination for default, will not be issued in connection with a purchase made on Form 383.

(1) If all of the supplies or services ordered on Form 383 are terminated for default, notice of termination for default to the vendor will be by letter and a copy of the letter will be filed with the original (white) copy in the Contracting Officer's file, and copy will be furnished each addressee on the original distribution list.

(2) If any or a part of the supplies or services ordered by use of Form 383 are terminated for default, notice of termination for default will be by letter, and a copy will be furnished to each addressee on the original distribution list.

(3) When situations arise which make modifications necessary, such as an increase or decrease in quantities or prices, or a change in name of vendor, time of delivery, discount terms, or any other change other than termination for default, the change will be made by canceling the original order of Form 383, including all copies thereof, and issuing a new order on Form 383 showing the desired terms and necessary information.

(k) If the purchase is based on a written quotation, the original of the quotation will be processed with the original (white) of Form 383 to the General Accounting Office. (See flow chart, § 590.705-13.)

(l) Overages and shortages in the quantities called for on an order, which are caused by conditions of loading, shipping, packing, or allowances in manufacturing processes, may be accepted provided the aggregate amount of the order (including any accepted overages and shortages) does not exceed \$1,000. When any such overages or shortages are accepted, an adjustment of the total dollar amount for payment will be made in the "Differences" section of DA Forms 383 and 383c after the "Quantity Accepted" column has been completed.

(m) The Contracting Officer is responsible for obtaining from the Fiscal Officer a citation of the proper funds to be charged. The signature of the Contracting Officer on copy No. 1 of Form 383 will constitute the certification that funds are available under the appropriation and allotment cited in the accounting classification.

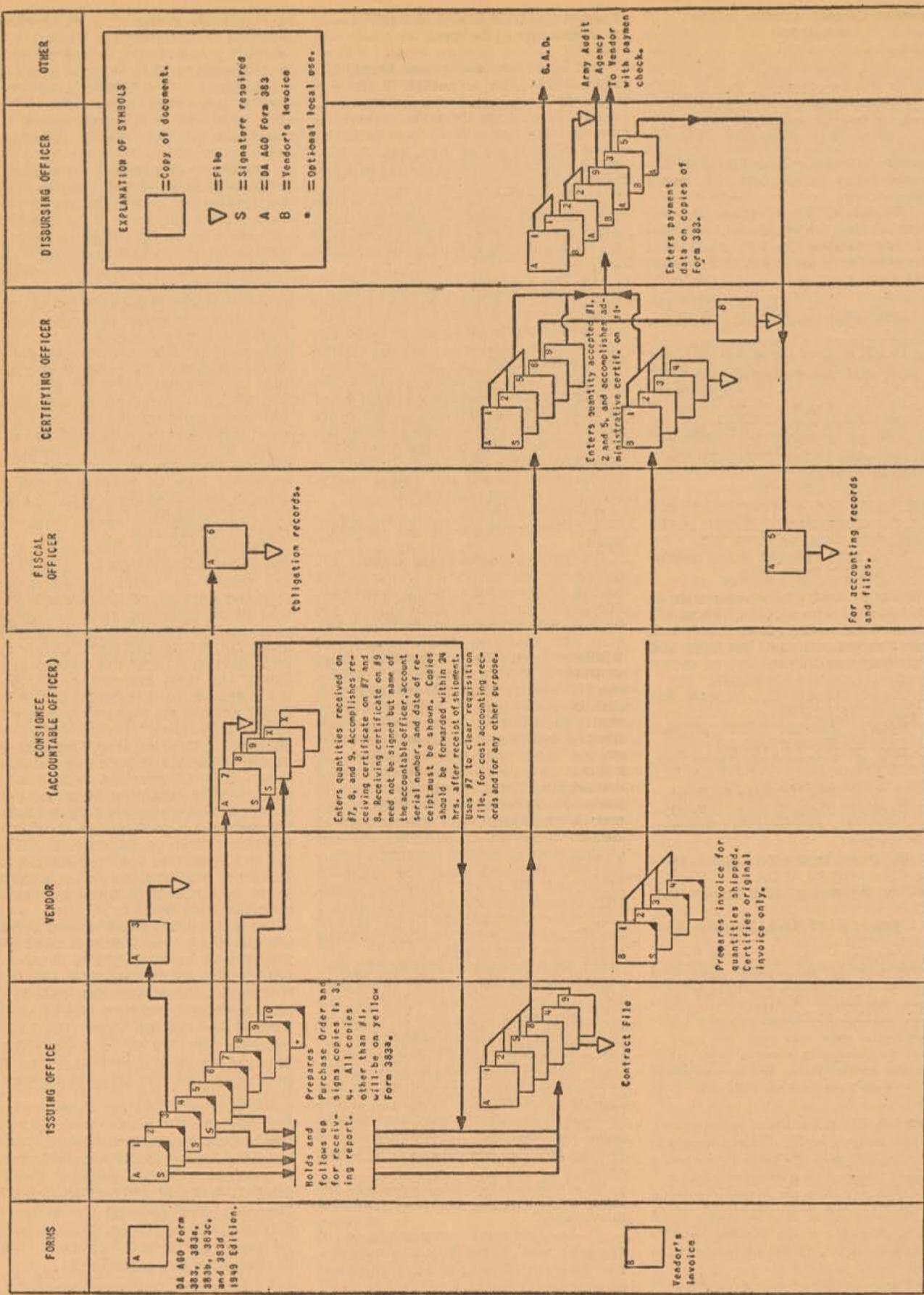
(n) Form 383 will not be used in making purchases when shipment of supplies are to be consigned to a water or aerial port of embarkation for transhipment to an oversea destination. In such instances, purchase will be accomplished by use of other appropriate purchase forms in conjunction with the Materiel Inspection and Receiving Report (Oversea) (DA AGO Form 604).

§ 590.705-11 Use of master mats. Installations which are unable to utilize the 10-part forms furnished may utilize master mats only after specific approval is obtained from the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch). Procurement or supply of master mats will be as directed by the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch).

§ 590.705-12 Additional instructions. See § 596.512 of this chapter.

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§ 590.705-13 Flow chart. A flow chart indicating the processing of copies of DA AGO Form 383 is set forth below:



SUBPART H—PROCUREMENT ACTION REPORTING

§ 590.800 Scope of subpart. This subpart sets forth instructions for the preparation of the Procurement Action Report. It implements the Armed Services Procurement Regulation generally rather than a specific part or section thereof.

§ 590.801 General. To conform with the provisions of Public Law 413, 80th Congress, Armed Services Procurement Act of 1947, and with instructions of the President of the United States, and to provide the Assistant Chief of Staff, G-4, Department of the Army, with management data essential to staff control over Army procurement, procurement action reports will be prepared on the forms and submitted at the times herein prescribed. Heads of Procuring Activities (as defined in § 400.201-4 of this title) may issue implementing instructions, as required, to their Contracting Officers. A copy of each such implementation will be forwarded, as issued, to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch).

§ 590.802 Data to be included. Data reported will cover all procurement actions (see § 590.807) transacted under the provisions of the Armed Services Procurement Regulation and this Procedure by all Contracting Officers of the Army Establishment. Procurement actions for civil functions, such as Engineers Civil Works and Alaskan Communications System, are not included in this reporting requirement.

§ 590.803 Forms. Reports will be prepared on DA AGO Form 377 (Procurement Action Report, Monthly Summary), (Reports Control Symbol CSGLD-190) (R-2), and DD Form 350 (Individual Procurement Action Report) (Reports Control Symbol DD-MB-245). Supply of forms will be requisitioned through normal publications supply channels.

§ 590.804 Number of copies and routing. (a) The original of DA AGO Form 377 and the original of each DD Form 350 will be forwarded direct to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch). A copy of DA AGO Form 377 will be forwarded through channels to the appropriate Heads of Procuring Activities. Letters of transmittal to accompany these reports are not necessary and will not be used. Heads of Procuring Activities may require copies of DD Form 350 to be furnished by their Contracting Officers.

(b) For each unclassified or restricted procurement action having a value over \$10,000 and subject to the Walsh-Healey Public Contracts Act (Subpart F of Part 411 of this title), two additional copies of DD Form 350 will be prepared and forwarded with the original to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), who will transmit the pertinent parts thereof to the Department of Labor in lieu of Standard Form 99 (Notice of Award of Contract). These additional copies will not be prepared

for actions bearing a security classification higher than restricted.

(c) An additional copy of DD Form 350 will be submitted to the Assistant Chief of Staff, G-4, Department of the Army, (Attn.: Chief, Current Procurement Branch) when the dollar value of the action reported is \$500,000 or more.

§ 590.805 Frequency and due dates. The procurement action reporting forms (DD Form 350 and DA AGO Form 377) will be submitted as follows:

(a) Class I Installations and Activities will forward the original DA AGO Form 377 and the original of each DD Form 350 at the same time. These forms for the completed calendar month will be forwarded not later than the 5th day of the following month.

(b) Class II Installations and Activities will prepare DD Form 350 for each reportable procurement action and forward this form within four working days after the date an individual action as described in § 590.807 is transacted. DA AGO Form 377 will be forwarded not later than the 10th day of the following month. (See § 590.809 (a)).

(c) Oversea Purchasing Offices will forward the original DA AGO Form 377 and the original of each DD Form 350 at the same time. These forms for the completed calendar month will be forwarded not later than the 10th day of the following month.

(d) Negative DA AGO Forms 377 will be submitted by all reporting activities when appropriate.

§ 590.806 Reporting activities. The Procurement Action Report (DA AGO Form 377 and DD Form 350) will be prepared by all Contracting Officers of the Army Establishment (in the continental United States, its territories and possessions, major oversea commands, attachés and foreign missions), designated as such pursuant to § 590.450, transacting purchases, procurements or executing contracts payable from appropriated funds (§ 590.251).

§ 590.807 Procurement actions to be reported. (a) A "procurement action" means any type of agreement or order for the procurement of supplies or services which obligates funds as set forth in § 590.806. It includes, by way of description and without limitation, awards and preliminary notices of awards; contracts of a fixed-price, costs, cost-plus-a-fixed-fee, exchange, or time and material; delivery orders, job orders, task orders or task letters issued against open end or indefinite quantity contracts; letter orders, letters of intent, and purchase orders. It includes modifications (amendments, change orders, and supplemental agreements) with respect to any of the foregoing (see Subpart D of Part 402 of this title). It also includes the purchasing, renting, leasing, or otherwise obtaining supplies or services from either private sources or Governmental agencies outside of the Department of Defense. (For interdepartmental procurement, see § 590.808 (r).) It excludes requisitions transferring supplies or services within, or between the military departments or the joint procurement agencies of the De-

partment of Defense. (For interservice procurement, see § 590.808 (r).)

(b) Term contracts, open-end contracts, indefinite quantity contracts, or agreements for obtaining supplies, which do not include specific quantities or total dollar value, will not be reported by the activity which executes such contract. Activities which execute individual purchase instruments or orders against such contracts will report each individual action of \$10,000 or over on DD Form 350 and will report the sum of all purchases irrespective of dollar value on DA AGO Form 377. Similarly, job orders against Army Establishment manufacturing installations will not be reported, but contracts for materials necessary to accomplish the job order will be reported.

(c) DD Form 350 will be submitted only for individual procurement actions having a value of \$10,000 or over. DD Form 350 will be submitted for each modification (amendment, change order, or supplemental agreement) increasing or decreasing the value of a contract by \$10,000 or more, regardless of value of basic contract and regardless of whether basic contract was executed prior to effective date of Public Law 413, 80th Congress (May 19, 1948). As an exception to the above instructions, every procurement action negotiated under sections 2 (c) (11) and 2 (c) (16) of Public Law 413 will be reported on DD Form 350 without regard to any dollar value limitation. No modifying actions having a dollar value of less than \$10,000 will be reported on either DD Form 350 or DA AGO Form 377 except those modifying contracts negotiated under authority of sections 2 (c) (11) and 2 (c) (16) of Public Law 413.

§ 590.808 Instructions for preparation of DD Form 350 (Individual Procurement Action Report). The instructions contained herein supplement the specific instructions printed on the reverse side of DD Form 350.

(a) **Item 1; report number.** This number will represent the serial number of DD Form 350 submitted by each office, installation, activity, or individual within the current fiscal year. The report covering the first procurement action taken in fiscal year 1951 by each office will bear the number "1", and consecutively thereafter for subsequent procurement actions. The report covering the first procurement action taken in each succeeding fiscal year, beginning July 1, will again bear the number "1". The numbering will be in accordance with the date of the report, Item 26, and not according to the date of the procurement action, Item 11.

(b) **Item 2; department.** Enter "Army" if not so pre-printed.

(c) **Item 3; bureau, technical service, or command.** Enter the name of the Procuring Activity having responsibility for the procurement action; such as Quartermaster Corps, European Command, Third Army, National Guard, etc. (See § 590.809 (d)).

(d) **Item 4; Procuring office and address.** Enter title, address, and station number in sufficient detail to establish readily the identity of the office, instal-

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lation, activity, or individual preparing the report.

(e) *Item 5a; contractor name and business address.* Enter the name and business address, including street or post office box, of the contractor or vendor with whom the procurement action was transacted.

(f) *Item 5b; division of.* In cases where the contractor or vendor identifies himself as a division of a parent company, enter the name of the parent company concerned.

(g) *Item 6; place of manufacture.* Enter the actual location of the vendor's place of business from which the items will be supplied or the plant in which the items will be produced. If the items are to be supplied from a vendor or plant to which the contractor subcontracts the order, or for which the contractor acts as a broker or factor, the name and location of the vendor or plant from which the items will be supplied will be entered. If the supply or production source is unknown, not available, or identical with item 5a, so indicate. Completion of the form will not be delayed for lack of this information.

(h) *Item 7; contractual instrument number.* Enter the complete number of the contract to which this report pertains in accordance with § 590.603.

(i) *Item 8; kind of procurement action.* Place an "X" mark in the appropriate box to show whether:

(1) Action is a preliminary instrument such as a letter of intent or letter order;

(2) Action is a new definitive contract (includes Purchase Order);

(3) Action is a definitive contract (includes Purchase Order) superseding a preliminary instrument; if this is the case, record under item 10 only the change (debit or credit) from value reported for preliminary instrument;

(4) Action is an order other than Purchase Order such as Job Order, Task Order, or Delivery Order; or

(5) Action is a modification to a previous contract; if action is a modification, place another "X" mark in the appropriate box to show whether it is an amendment, change order or supplemental agreement, and enter the number thereof.

(j) *Item 9; description of commodity or service.* Enter a brief, explicit description of the major items being procured. This description must be in sufficient detail to permit identification of the commodity for determining purchase assignment. In making this determination, the use of the commodity is frequently a deciding factor, especially in the case of spare parts for trucks, for radios, for clocks, etc. Accordingly, the use of the commodity will be indicated, where applicable, in addition to the brief description of the item. Heads of Procuring Activities may require, by supplemental instructions, detailed lists of all the separate items to be appended. If the description of the item (s) bears a security classification, enter only the word "classified" in this space. When the dollar value of the procurement action is \$100,000 or more, a notation will be made in Item 9 showing the Department of Defense Claimant Program Code

Number (applicable to use of DO ratings); this may be abbreviated as DDCP-04, etc.

(k) *Item 9a; unit.* Enter, if practicable, the unit of measure of the item being procured: viz, each, ton, square feet (sq. ft.), etc.

(l) *Item 9b; quantity.* Enter, if practicable, the quantity of the item being procured.

(m) *Item 10; value of procurement action.* Enter the total value (in whole dollars only omitting cents) of the procurement action being reported on the form. If the action is a modification (amendment, change order, or supplemental agreement), enter for this item only the value of the specific action being reported. If an increase, indicate by the symbol DD (for debit); if a decrease, indicate by the symbol CR (for credit). Contracts terminated for any reason will be reported as decreases. The new contract or purchase against a defaulting contractor will then be reported in the usual manner.

(n) *Item 11; date of procurement action.* Enter the day, month, and year the procurement action (as defined in § 590.807) was taken. This should be the date upon which a binding agreement was reached.

(o) *Item 12; estimated completion date.* Enter month and year provided in the contract for the completion of the contract or, if such date is not included in the contract, an estimated date on which performance under the contract is expected to be completed.

(p) *Item 13; contract subject to Walsh-Healey Act.* Place an "X" mark in appropriate box to show whether contract is subject to Walsh-Healey Public Contracts Act in accordance with Subpart F of Part 411 of this title. If contract is subject to Walsh-Healey Public Contracts Act, place an "X" in appropriate box to show whether contractor is manufacturer or regular dealer in accordance with § 400.201-9 of this title and § 590.201-9. Generally, the Walsh-Healey Public Contracts Act is not applicable to procurement effected outside the United States, its territories and possessions (see § 596.001 (b) (1) (iv)).

(q) *Item 14; appropriation identification.* Enter the appropriation identifications to include serial numbers of appropriation, allotment, project, and object class. Enter opposite each appropriation identification the corresponding dollar obligation. Where more than five different appropriation symbols are involved, enter only the five against which the largest obligations are being made. When there is insufficient space to enter the appropriation identification in Item 14, the space provided in Item 24—Remarks, may be used.

(r) *Item 15; contract placement.* Place an "X" mark in appropriate box to show whether action is:

(1) *Interservice.* The term "interservice" refers to procurements within the Department of Defense only. It covers:

(i) Orders placed by one military Department against contracts entered into by another military Department.

(ii) Orders placed by activities of one military Department against contracts entered into by other activities of the same military Department.

(iii) Orders placed against contracts entered into by joint procuring agencies, viz: ASPPA, ASMPA.

(2) *Interdepartmental.* The term "interdepartmental" refers to procurements from or through Federal departments, agencies, institutions, and corporations other than those of the Department of Defense. It covers—

(i) Orders placed by a military Department, or agency thereof, against contracts entered into by any Federal department, agency, institution, or corporation outside the Department of Defense.

(ii) Contracts placed by a military Department, or agency thereof, with any Federal department, agency, institution, or corporation outside the Department of Defense. If sub-item (1) Interservice or (2) Interdepartmental has been checked in item 15, do not fill out remainder of form except for date of report and signature, item 26.

(3) *Advertised.* Secured on bids as a result of formal advertising. (See § 401.101 of this title.)

(4) *Negotiated.* Negotiated in accordance with the exceptions authorized by Public Law 413, 80th Congress and described in §§ 402.201 through 402.217 and 592.201 through 592.217 of this title.

(5) Modification authorized by existing contract, which was advertised.

(6) Modification authorized by existing contract, which was negotiated. Unless the modifying action being reported is authorized by the provisions of the basic contract and has been transacted pursuant to such provisions (viz, change order authorized by changes clause), do not check either subparagraph (5) or (6) of this paragraph.

(s) *Item 16; type of contract.* Place an "X" mark in appropriate box to show whether contract is:

(1) Fixed price;

(2) Fixed price, including price redetermination clause in accordance with §§ 596.152-1 or 596.152-3 of this chapter ((2a) fixed price, with downward revision only in accordance with § 596.152-2);

(3) Fixed price, including price escalation clause in accordance with § 596.151 of this chapter;

(4) Fixed-price, incentive;

(5) Cost;

(6) Cost-plus-a-fixed-fee;

(7) Time and material; or

(8) Other. (Specify if contract is of another price characteristic not listed above.)

(t) *Item 17; negotiated under exception Public Law 413.* (1) If item 15 (4) or item 15 (6) has been checked to indicate a negotiation, then place an "X" mark in appropriate box to show the most applicable exception, as authorized by the cited paragraphs of Public Law 413, 80th Congress, under which the action was negotiated. The exceptions are listed in the same sequence as they appear in Public Law 413 and in Part 402 of this title. Guidance in the application of the exceptions to specific negoti-

ated procurement actions is given in Parts 402 and 592 of this title.

(2) Sub-item (1) National Emergency will be used only when it is determined by the Secretary to be necessary in the public interest during a period of national emergency declared by the President or by the Congress.

(3) No entry will be made for sub-item (3) (Not over \$1,000) because no action less than \$10,000 will be reported on this form except under sub-items (11) (Research and Development) and (16) (Industrial Mobilization).

(4) No entry will be made under sub-item (4) (Personal or Professional Services) unless the contract was negotiated under this exception and complies with the requirements and limitations of §§ 402.204-2 and 592.204-2 of this title. Attention is directed to § 592.204-2 (a) of this chapter, which requires all contracts negotiated under this exception to be executed subject to the approval of the Secretary of the Army.

(5) A contract negotiated under sub-item (10) (Competition Not Practicable) should specify the reason. Examples of instances when competition would not be practicable are set forth in § 402.210 of this title.

(6) A contract negotiated under sub-item (17) (Otherwise Authorized By Law) must specify the law, other than Public Law 413, which authorized such negotiation.

(7) If a contract has been negotiated under sub-items (11) through (16) inclusive, which are further identified by the symbol,¹ place an additional "X" in appropriate box to show the source of authority for negotiation. (See Subpart C of Part 402 of this title.)

(8) Procuring Activities of the Army Establishment will not use sub-item (18) (sec. 2 (e), Armed Services Procurement Act of 1947) but where a construction contract has been negotiated, sub-item number (2), (6), (10), (11), (12), or (15), as applicable, will be checked.

(u) Item 18; contractor represents that (1) Place an "X" mark in appropriate box to show whether contractor represents that the aggregate number of employees of his organization and its affiliates is less than 500 or is 500 or more. This item is not applicable to procurement effected outside the United States, its territories and possessions.

(2) Place an "X" mark in appropriate box to show whether contractor represents he has employed or retained a company or person (other than a full-time employee) to solicit or secure this contract.

(v) Item 19; contract purpose. Place an "X" mark in the appropriate box to show purpose of contract in accordance with listing. Descriptions of the general purposes of different types of contracts are given below, but such examples are not to be construed as being restrictive to the matter set forth. They include other purposes related to the general classification given. It is left to the discretion of the Contracting Officer to determine and check the most applicable purpose if two or more purposes are involved.

(1) *Supply.* Applies when procurement is for supplies and is accomplished with appropriated funds.

(2) *Architectural-engineering.* Applies to contracts for the performance of architectural and engineering services.

(3) *Construction.* Applies to the construction, alteration or repair of buildings, bridges, roads, or other real property.

(4) *Lease.* Applies to the lease of real or personal property which involves the expenditure of appropriated funds.

(5) *Maintenance.* Applies to supplies and non-personal services involving maintenance of equipment, munitions and supplies (excluding construction).

(6) *Industrial mobilization.* For application, see §§ 402.216 and 592.216 of this title.

(7) *Research and development.* For application, see §§ 402.211 and 592.211 of this title, and §§ 402.205 and 592.205 of this title.

(8) *Personal services.* For application, see §§ 402.204 and 592.204 of this title.

(9) *Transportation.* Applies to tug services, stevedoring, freight handling, drayage, ship repair, ocean transportation, motor van services, repair of railroad equipment, towage, lighterage, truck services, salvage services, and lumber handling. Does not apply to Government bills of lading, transportation services procured by transportation request, various forms of transportation agreements which do not involve receipt of or expenditure of funds such as switching agreements, rate and traffic agreements, track and interchange agreements, participation in railroad codes and rules and acceptance of quotations under section 22 of the Interstate Commerce Act.

(10) *Utilities.* Applies to electric power, water, gas, etc.

(11) *Other.* Any procurement with appropriated funds which does not fall in any of the above categories will be listed under this purpose and specified.

(w) Item 20; type of contract. Place an "X" mark in appropriate box to show type of contractor in accordance with the listing.

x. Item 21; does contract contain renegotiation clause? Place an "X" mark in appropriate box to show whether contract includes renegotiation clause in accordance with §§ 406.104-10 and 596.104-10 of this title.

(y) Item 22; has this commodity been assigned by Munitions Board under single department purchase assignment program? (See §§ 403.100 and 593.150 of this title.) Place an "X" mark in appropriate box to show whether commodity has been assigned by the Munitions Board under the single department purchase assignment program. If sub-item (1) (yes) is checked, then indicate by an additional "X" the department to which the commodity has been assigned.

(z) Item 23; security classification. Place an "X" mark in appropriate box to show the security classification of the contract described. The security classification indicated herein will correspond to the highest classification appearing on

the Security Requirements Check List (DD Form 254). See paragraph (ee) of this section.

(aa) Item 24; remarks. (1) When procurement action is effected under Mutual Defense Assistance Program, the following information will be entered under this item.

(i) MDAP Procurement.

(ii) Date schedule of first delivery and partial deliveries thereafter through contract completion.

(iii) The dollar value of the MDAP procurement when the total value of the contract being reported (Item 10) includes procurement for requirements other than MDAP.

(2) Letter orders for obligation or payment of funds will be identified in Item 24 by a remark showing the approving authority (by title), the estimated contract cost and the expiration date of the letter order (day, month, year). Upon formalization of a contract which was initiated by a Letter Order, reference to the original report of the letter order will be made in Item 24 of the subsequent report as follows: "Ltr O \$_____ previously reported on report No. _____ dated _____"

(3) Information regarding the approving authority should be reported in Item 24 for the following negotiated contracts:

(i) Construction and rehabilitation at installations. When contract exceeds \$100,000 enter remark as follows: "Negotiated Award (CRI) approved by _____"

(Title)

(ii) Architect-engineer contracts. When such contract is otherwise required to be reported on DD Form 350 enter remark as follows: "Negotiated Award (AE) approved by _____"

(Title)

(iii) Research and development contracts. When contract exceeds \$25,000 enter remark as follows: "Negotiated Award (R & D) approved by _____"

(Title)

(iv) Negotiated contracts in general. When contracts exceed \$100,000 enter remark as follows: "Negotiated Award (Gen) approved by _____"

(Title)

(4) One of the following remarks will be entered in Item 24 of DD Form 350 for each contract in excess of \$100,000.

(i) Planned item; planned producer. (To be used when contractor is supplying a planned item for which he is the planned producer.)

(ii) Planned item; not planned producer. (To be used when the contractor is supplying a planned item for which he is not the planned producer.)

(iii) Not planned item. (To be used when item is not a planned item: No remark is required concerning planned producer regardless of whether or not the supplier may be a planned producer of some other item which may be a planned item.)

(5) Enter any other comments to supplement or amplify the information shown in the body of the report which are considered essential to a proper un-

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derstanding of the report, in addition to the information specified in subparagraph (1) of this paragraph, if applicable. This space may also be used for additional data when required by the Heads of Procuring Activities or major oversea commanders.

(6) On the copy of each DD Form 350 forwarded to the Assistant Chief of Staff, G-4, Department of the Army, enter a statement to the effect that the procurement is or is not exempt from the General Ceiling Price Regulation issued by the Economic Stabilization Agency, and if not exempted, to indicate, when applicable, if the procurement was made under the emergency or hardship provisions of section 9 or 13 respectively of Supplemental Regulation 1 to the General Ceiling Price Regulation.

(bb) *Item 25; optional for departmental use.* Preparing officers will complete under this item only the following:

(1) Under sub-item (4) place an "X" mark in appropriate box to show if procurement was made under an exception to the Buy American Act in accordance with Subpart A, Part 405 of this title.

(2) Under sub-item (6) place an "X" mark in appropriate box to show type of transportation costs in the contract value in accordance with the listing.

(cc) *Item 26; date of report.* Enter the day, month, and year on which the report is prepared.

(dd) The form will be signed by the Contracting Officer or his authorized representative and name of signing individual typed in spaces provided therefor.

(ee) *Security classification of DD Form 350.* DD Form 350 will be stamped in the upper and lower margins with the appropriate security classification in accordance with Part 505 of this chapter. The security classification so stamped need not necessarily correspond to the security classification of the contract (item 23) but is rather a matter for the discretion of the preparing officer and is dependent upon the information appearing on the form.

§ 590.809 Instructions for preparation of DA AGO Form 377 (procurement action report monthly summary). (a) This summary will include every new procurement action, as defined in § 590.807, transacted during the month covered by this report, irrespective of the dollar value of any such action. It will include every modification (amendment, change order, or supplemental agreement) to contracts negotiated under paragraphs 2c (11) or 2c (16) of Public Law 413, irrespective of the dollar value of any such contract or modification thereto. This summary will also include every modification involving an increase or decrease of \$10,000 or more. Modifications not pertaining to paragraphs 2c (11) or 2c (16) of Public Law 413 which involve an increase or decrease of less than \$10,000 will be completely excluded from this summary.

(b) For the purpose of this summary only those reportable modifications made pursuant to the provisions of the basic contract will be reported in the columns headed "number of modifications." New

actions and reportable modifications not made pursuant to the provisions of the basic contract will be reported in the columns headed "number of new actions."

(c) The dollar value entries in this summary will reflect the net total of all debit and credit procurement actions reportable under paragraph (a) of this section. If during the month the credit actions exceed the debit actions for any item, a credit entry will be shown. Such entry will be preceded by the symbol CR (for credit). Dollar value entries will not include cents. (Example: \$500 not \$500.25 nor \$500.00.)

(d) Monthly summaries will be consolidated at the following levels and in the following manner prior to submission to the Assistant Chief of Staff, G-4, Department of the Army.

(1) At Class I installations all reportable actions will be consolidated each month on one DA AGO Form 377 regardless of the source of the funds involved in any of the actions. The appropriate Army Area having responsibility for the Class I installation will be indicated in the space for "Technical Service or Command."

(2) At Class II installations those reportable actions which have been transacted for the purpose of Class I activities will be consolidated on one DA AGO Form 377, and the appropriate Army Area having responsibility for the Class I activities will be indicated in the space for "Technical Service or Command." All other reportable actions at Class II installations will be consolidated on one DA AGO Form 377, and the technical service having responsibility for the Class II installation will be indicated in the space for "Technical Service or Command." The governing factor in the aforementioned breakdown will be whether the action was executed for the purpose of Class I activities or for the purpose of Class II activities. Where the contractual instrument has been assigned a number pursuant to SR 35-218-5 (special regulations regarding fiscal station numbers) the letter symbol of this number may be used as a guide. As an exception to the above, general depots will submit one DA AGO Form 377 for each Procuring Activity located at the depot.

(3) Within continental United States all Class II activities, except general depots, will submit to the head of the technical service concerned the total dollar value of Procurement Actions to be reported in line 3, column A, of DA AGO Form 377. The head of each technical service will consolidate such reports and on the eighth of each month forward to the Assistant Chief of Staff, G-4, Current Procurement Branch, the sum of such reports which will be the total procurement for the month for each technical service. (RCS CSGLD 339)

(4) General depots in the continental United States will submit by telephone or teletype a report direct to the Assistant Chief of Staff, G-4, Current Procurement Branch by the eighth day of the month giving the dollar value of Procurement Actions for the previous month by each Procuring Activity located at the depot.

(e) *Date of report.* Enter the day, month, and year on which the report is prepared.

(f) *From.* Enter the title and address of the Procuring Activity in sufficient detail to readily establish the identity of the office, installation, activity, or individual preparing the report.

(g) *Station number.* Enter the fiscal code station number. Where a Class II installation has been assigned a separate station number to identify its Class I activities (§ 590.603-5 (b)) this latter station number will be entered on the Army Area report from this installation (paragraph (d) of this section).

(h) *Month ending.* Enter the month covered by the report. Where information for DA AGO Form 377 is obtained from DD Form 350, the date of report (Item 26, DD Form 350) will be the controlling factor in determining which monthly summary (DA AGO Form 377) will include the action reported. For example, a procurement action executed 28 November but having a "date of report" of 2 December will be reported in the monthly summary of December actions.

(i) *Technical Service or Command.* Enter the name of the Technical Service, Army Area, or Command having responsibility for the Procuring Activity: such as Quartermaster Corps, Third Army, Far East, National Guard Bureau, etc. At Class I and Class II installations the instructions set forth in paragraph (d) of this section will govern.

(j) *Column (A) total.* Enter in the appropriate spaces the totals of the figures in all columns to the right of Column (A).

(k) *Column (B) with "small business."* Enter in this column the appropriate figures to show the "small business" breakdown in accordance with the listing on the left of the form, and excluding any interdepartmental or interservice procurement. For the purpose of this report a "small business" is one in which the aggregate number of employees of the contracting organization and its affiliates is less than 500 (Item 18, DD Form 350 where such form has been submitted). This column will not be used by Procuring Activities outside the United States, its territories and possessions.

(l) *Column (C) other than "small business."* Enter in this column the appropriate figures to show the "other than small business" breakdown in accordance with the listing on the left of the form and excluding any interdepartmental or interservice procurement. Procuring Activities outside the United States, its territories and possessions, will use this column to indicate all procurement other than interdepartmental or interservice.

(m) *Column (D) interdepartmental.* Enter in this column the total interdepartmental figures in accordance with the listing on the left of the form.

(n) *Column (E) interservice.* Enter in this column the total interservice figures in accordance with the listing on the left of the form.

(o) *Remarks.* Enter the DD Form 350 report numbers of those actions reported in line 5 (11) (Research and Develop-

ment) and line 5 (16) (Industrial Mobilization). Enter any other comments to supplement or amplify the information shown in the body of the report which are considered essential to a proper understanding of the report. This space may also be used for additional data when required by the Heads of Procuring Activities.

(p) The report will be signed by a Contracting Officer or his authorized representative and the appropriate name and title typed in the space provided. Where a consolidated monthly summary is being prepared pursuant to paragraph (d) of this section, the consolidated report will be prepared and signed by an officer so designated by the commanding officer of the installation concerned.

PART 591—PROCUREMENT BY FORMAL ADVERTISING

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591.501 Authority for qualified products.
591.504 Qualified Products Lists.

AUTHORITY: §§ 591.000 to 591.504 issued under R. S. 161; 5 U. S. C. 22. Interpret of apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 591.000 Scope of Part. Supplementary to, but consistent with, Part 401 of this title, this part sets forth (a)

the basic requirements for the procurement of supplies and services by means of formal advertising, (b) the information to be contained in forms used for the solicitation of bids, (c) methods of soliciting bids, (d) policies with respect to the submission of bids, (e) requirements for the opening and evaluation of bids and for the awarding of contracts, and (f) requirements for the procurement of qualified products.

SUBPART A—USE OF FORMAL ADVERTISING

§ 591.101 Meaning of formal advertising. As used throughout Parts 590 through 603 of this chapter, formal advertising means that method of procurement prescribed in Part 401 of this title, and in this part with respect to competitive bids and awards.

§ 591.102 Use of formal advertising.—(a) Policy. Subject to such further instructions as may be issued by the Heads of Procuring Activities, during a period of national emergency declared by the President or by Congress procurement may be effected by formal advertising only when time permits and delivery requirements are not jeopardized by such action and only when (see also § 590.301 of this chapter):

(1) Procuring standard commercial supplies or services; or

(2) Adequate specifications or any other adequately detailed description of the required supplies or services are readily available; or

(3) Procurement by formal advertising will expedite the consummation of the transaction or will obtain the required items more rapidly than by negotiation; or

(4) There are no important factors to be considered in making the award, such as time of delivery, etc., other than price and it is anticipated that the supplies or services can be purchased more economically by formal advertising; or

(5) The list of suppliers to be solicited is extensive, full competition is desired and purchase by formal advertising will be accomplished more efficiently and expeditiously than by negotiation; or

(6) In such additional instances as are deemed to be necessary and as prescribed by the Head of a Procuring Activity.

(b) Lists of bidders. Current lists of bidders will be maintained. Requests for inclusion on such lists will receive prompt and courteous attention. Lists of bidders will be maintained in accordance with § 401.202 of this title and shall not include the name of any person or firm appearing in the "Consolidated Listing of Suspended and Ineligible Contractors and Disqualified Bidders" (§ 590.303 (d) of this chapter).

(c) Classified contracts. Procurements classified as confidential, or higher, shall not be effected by formal advertising, except when the Head of a Procuring Activity considers this method to be in the interest of the Government.

SUBPART B—SOLICITATION OF BIDS

§ 591.201 Preparation of forms.—(a) Prescribed forms. Forms prescribed for the procurement of supplies by formal advertising are set forth in Subpart E of part 596 of this chapter.

(b) Invitation for bids number. Every invitation for bids will be assigned and will contain in the upper right-hand corner (unless otherwise provided for on standard forms):

(1) The letter symbol of the Procuring Activity, followed by a dash.

(2) A number consisting of the station number of the office issuing it, if one has been assigned, a dash.

(3) The last two numerals of the fiscal year in which the invitation is issued, regardless of the fiscal year funds to be expended, a dash.

(4) The serial number of the invitation.

Only one series will be used under any one station number for any Procuring Activity for each fiscal year, and the first invitation issued in each fiscal year will bear 1 as its serial number. Subsequent serial numbers will be assigned consecutively, in their order of issuance. A serial number once assigned to an invitation which has been distributed will not be used in the same fiscal year for any other invitation. For example, the first invitation for bids issued by Philadelphia Quartermaster Depot in the fiscal year 1951 will be numbered QM-36-030-51-1. Other numbers or letters may be prefixed to this number if such action is desired by the Head of a Procuring Activity.

(c) Discount provisions. If the discount provisions contained on the prescribed forms are not suitable, the following changes therein may be made:

(1) The discount provision on the bid form relating to "10 calendar days," "20 calendar days," etc., may be deleted whenever it is definitely known that final acceptance cannot be accomplished, or that payment cannot be effected, within the period of time from date of delivery. In order to take advantage of any discounts offered, this authority will be used sparingly. If, for example, commercial practice for a certain class of material is to use a 10-day discount period, the deletion will not be made. (See §§ 535.28 through 535.30 of the chapter.)

(2) In special cases where a prolonged acceptance test is necessary, and the invitations or specifications set a limiting date for acceptance that is more than 20 days after date of delivery, the provision in the form as to computation of discount time may be changed to read as follows: "Time, in connection with the discount offered, will be computed from the limiting date set herein for final acceptance." When this change is made, the limiting date for final acceptance must be stated in the invitation.

(d) Place of contract performance. For the purpose of evaluating bids and for assistance in performing survey, inspection, and expediting functions, every invitation for bids will require bidders to state the location of the manufacturing or processing plant or factory or the warehouse or other establishment from which the supplies are to be furnished. Similarly in the case of services, the location at which the services are to be performed will be shown.

(e) Delivery clause. Each invitation for bids will contain an appropriate delivery clause suitable to the circum-

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stances involved in the particular procurement.

(f) *Place of delivery.* When transportation costs are important and the exact destination of the supplies being purchased is not known at the time bids are solicited, but the general geographical section in which delivery will be made is known, as East Coast, Middle West, or West Coast, for purposes of evaluation of bids only, a definite place may be designated in the known geographical sector as the point to which transportation costs will be computed in determining the low bidder. In order that prospective bidders may understand the method of evaluation to be used, the following clause should be incorporated in the Schedule:

For the purpose of evaluating bids (and for no other purpose), the final destination(s) for the supplies will be considered to be as follows . . . *

(g) *F. o. b. purchase policy.* The policy with respect to the purchase of supplies on an f. o. b. destination or origin basis is set forth in § 590.350 of this chapter.

(h) *Increase or decrease in specified quantity.* When it is considered necessary, in the interest of the Government, to provide for an increase or decrease in the quantity specified in the invitation, at the option of the Government, the maximum percentage of such increase or decrease shall be specified by the Contracting Officer in the invitation. Such percentage will only, in rare cases, exceed 25 percent and shall not in any case exceed 50 percent.

§ 591.202 *Methods of soliciting bids.*—
(a) *Issue of invitations for bids.* Invitations for bids shall be issued by the Contracting Officer charged with the procurement of the supplies involved. When authorized by the Contracting Officer, invitations may be issued by others, but in such cases the award shall be made, and the contract shall be signed by the Contracting Officer.

(b) *Time allowed before opening.* Invitations for bids will, as a rule, allow 30 days to intervene between the date of issuance and the date of opening bids. A shorter period may be allowed, but no period of less than 10 days will be designated, except in case of emergency. The existence of such emergency will be determined by the Contracting Officer, and the copy of the invitation furnished the Procurement Information Center, Office of the Under Secretary of the Army (§ 591.251 (a)), will bear on its face the following certificate and appropriate reasons signed by the Contracting Officer:

I certify that the date shown hereon for the opening of bids cannot be a later date for the following reasons—

§ 591.202-1 *Mailing or delivering to prospective bidders.* (a) The extent of the distribution of invitations for bids to qualified prospective bidders will be determined by the Contracting Officer but must be wide enough to assure full and free competition on all items.

(b) Invitations for bids will not be issued to those firms and persons whose names appear in the "Consolidated List-

ing of Suspended and Ineligible Contractors and Disqualified Bidders." (§ 590.303 (d) of this chapter.)

(c) Bidders' lists will contain only the names of persons or firms qualifying as "sources of supply," as defined in §§ 400.201-9 and 590.201-9 of this title, and such other persons, firms, and agencies authorized by Parts 400 through 414 and 590 through 603 of this title, or the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

§ 591.202-4 *Publishing in newspapers.* The publication of essential details of invitations for bids in newspapers as paid advertisements may be authorized, as indicated below, when this is necessary in order to secure effective competition, or in view of the quantity, character, or value of the supplies or services to be procured, and if time will permit.

(a) *Authority.* (1) Authority to approve the publication of paid advertisements in newspapers, magazines, and other periodicals in connection with the dissemination of procurement information (invitations for bids and proposed purchases), recruitment of both military and civilian personnel, and all other forms of advertising authorized by law has been delegated by the Secretary to:

(i) The Under Secretary of the Army.
(ii) The Assistant Chief of Staff, G-4, Department of the Army.

(iii) The Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, Department of the Army.

(iv) Commanding generals, continental armies, for recruiting purposes only.

(v) Division Engineers, Corps of Engineers, for civil works and construction only.

(vi) The Director, Procurement and Supply Division, Office of the Secretary of the Army.

Such delegated authority shall not be redelegated.

(2) No advertisement, notice, or proposal shall be published in any newspaper except in pursuance of written authority for such publication from the Secretary or the appropriate official named above, or of a person to whom administrative duties have been duly assigned by the Secretary or the appropriate official named above, and no bill for any such advertising or publication shall be paid unless there be presented, with such bill, a copy of such written authority.

(3) The administrative duties involved in accomplishing such advertising may be assigned by the appropriate official named above to subordinates by name or position (or by name and position, if appropriate) by suitable instruments in writing setting forth the extent of the administrative duties involved and authorized to be performed by or through such subordinates (28 Comp. Gen. 305). Copies of instruments assigning administrative duties hereunder:

(i) Must either be attached to the first voucher submitted for payment and accompany same to the Army Audit Branch, General Accounting Office; or

(ii) Such instruments assigning administrative duties may be forwarded

direct to that branch immediately upon the issuance of same.

(4) Standard Form 1143—Revised (Advertising Order) will be signed by the person to whom authority to advertise has been delegated as indicated in subparagraph (1) of this paragraph, or by the person to whom authority to place the advertising order has been assigned in accordance with subparagraph (3) of this paragraph. When the person signing is acting under an instrument assigning him authority as to administrative duties, reference will be made to the date and number of such instrument of assignment in the box on the revised standard form to the left of his signature, in addition to the reference to § 591.202-4 (a), delegating authority to advertise by the Secretary in the box in the upper right-hand corner of the form. The Comptroller General has directed that the present supply of Standard Form 1143 (Advertising Order) on hand and at the Government Printing Office will continue to be used until exhausted, and has indicated that at the next reprint of the form a box to the left of the line for signature will be provided thereon for a reference to the instrument of assignment. Until the revised form is available, such reference to the instrument of assignment should be made on Standard Form 1143 in the space under the title (Advertising Order) of that form.

(b) *Requests for authority to place advertisements.* (1) Requests for authority to place advertisements in newspapers will be made on WD AGO Form No. 192 (Request for Authority to Advertise), in accordance with instructions set forth in paragraph (h) (1) of this section, except that in case of emergency, the nature of which will be stated in the request, authority to advertise may be requested directly by telegraph to the proper official, who will, in such cases, secure the necessary coordination with others concerned.

(2) In making application for authority to advertise, those newspapers in which it is deemed advantageous to advertise, will be specified. Due economy will be observed, both as to the number of newspapers and the number of insertions, whether advertising under special or general authority, no greater number being used in any case than may be necessary to give proper and sufficient public notice.

(i) Special authority authorizes the publication of a given advertisement a specified number of times in a designated newspaper or newspapers.

(ii) General authority authorizes the publication during a fiscal year, as designated, of such advertisements for proposals as may be required by the duties of officers engaged in making frequent purchases or contracts.

(3) In all cases, authority to advertise must be secured in advance. Such authority will not be granted retroactively.

(c) *Preparation of advertisements.* (1) Except as provided in subparagraph (2) of this paragraph, all advertisements will be solid line, a sample of which, set up in accordance with the usual Govern-

ment requirements, is shown on Standard Form No. 1143—Revised (Advertising Order).

(2) When advertising to be set other than solid is authorized, care should be exercised to insure that the specifications are definite, clear, and specific, since no allowance will be made for paragraphing or for display or leaded or prominent headings, unless specifically ordered, or for additional space required by the use of type other than that specified in the sworn statement of advertising rates on file in the General Accounting Office. Specifications for advertising other than solid will accompany the advertisement copy submitted to the publisher with the advertising order, and copies of both documents will be transmitted to the General Accounting Office with the voucher.

(3) Any unnecessary expense to the Government resulting from failure to observe the requirements of §§ 591.202—591.202-5 may be made a charge against the pay of the officer responsible therefor.

(d) *Insertions and limitations thereon.* (1) Ordinarily advertisements will be given six insertions in daily or four in weekly papers. When more than 10 days are to intervene between the date of the first publication and the date of opening of bids, those in the daily newspapers inviting bids will at once be given four consecutive insertions, and immediately before the date of opening, two consecutive insertions. In construction projects, such insertions will be placed in sufficient time prior to the date of opening to allow interested bidders to secure plans and specifications and prepare bids. In case of emergency, advertisements may be given one or more insertions, as time and circumstances permit.

(2) No officer will authorize the publication of an advertisement beyond the morning of the day on which the opening of bids is to occur, and no payments will be made for continuing such publication beyond the period authorized.

(e) *Rates.* (1) Advertising may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts.

(2) Rates to be paid will be ascertained from sworn statements of commercial rates furnished by the proprietors, publishers, or authorized representatives of the newspapers or other publications in which the Government advertisements are to be placed, as specified in paragraph (h) (2) of this section.

(3) All advertising in newspapers, however, shall be audited and paid at rates not higher than those charged the general public; but lower prices may be secured whenever the public interest requires it.

(f) *Proof of publication.* (1) Every account for official advertising rendered should be accompanied by a copy of each issue of the publication in which the advertisement appeared. If copies of the publications are not available, however, it will be satisfactory if an affidavit of publication is furnished in lieu thereof.

(2) Copies of newspapers or affidavits in lieu thereof submitted as proof of publication will not be attached to the original voucher, but will be attached to the

duplicate voucher and retained in the disbursing office files until settlement of the Disbursing Officer's account has been effected by the General Accounting Office.

(3) Sections 591.202—591.202-5 shall not be construed to preclude the attaching of the tear sheet to the Public Voucher for Advertising (Standard Form No. 1144—Revised), in the designated place.

(g) *Forms.* (1) WDAGO Form No. 192 (Request for Authority to Advertise).

(2) The following Standard Forms for Government advertising are hereby prescribed and published for general use, in lieu of all other forms of like character previously used for this purpose:

Standard Form No. 1142—Revised (Statement of Advertising Rates).

Standard Form No. 1142a—Revised (Statement of Advertising Rates—Memorandum).

Standard Form No. 1143—Revised (Advertising Order).

Standard Form No. 1143a—Revised (Advertising Order—Memorandum).

Standard Form No. 1144—Revised (Public Voucher for Advertising).

Standard Form No. 1144a—Revised (Public Voucher for Advertising—Memorandum).

The Comptroller General has directed that, in the interest of economy, the present supply of unused Standard Forms Nos. 1142, 1142a, 1143, 1143a, 1144, and 1144a on hand and at the Government Printing Office will be used, until exhausted.

(h) *Use of forms.* (1) WDAGO Form No. 192 (Request for Authority to Advertise) will be prepared in triplicate and forwarded through channels to the appropriate official to whom authority has been delegated by the Secretary to authorize such advertising.

(i) The original of the Authority to Advertise must be filed with the first voucher making payment thereunder. A copy will be filed with the duplicate voucher.

(ii) Reference to the Authority to Advertise will be made, in the space provided for that purpose, on all subsequent advertising orders placed during the period embraced in the authorization.

(2) Sworn statements of commercial advertising rates, rendered on Standard Form No. 1142—Revised, and two memorandums therefor, Standard Form 1142a—Revised, must be furnished by the proprietors, publishers, or authorized representatives of newspapers or other publications in which Government advertisements are placed, and the rates so furnished shall govern the amount to be paid.

(i) Sworn statements of commercial advertising rates need not be renewed until rates are changed, or unless specifically required.

(ii) The original statement of advertising rates must support the first voucher (Standard Form No. 1144—Revised) paid to the publisher for advertising under those rates. Of the two memorandum copies, one will be filed with the duplicate voucher (Standard Form No. 1144a—Revised) and the remaining memorandum copy retained in the files of the office which placed the advertisements, for reference in certification of rates for subsequent vouchers.

(3) Standard Form No. 1143—Revised and memorandum therefor, Standard Form No. 1143a—Revised, are the forms used to place advertisements with the publishers. The qualifications set forth in paragraph (c) of this section, with reference to the composition of advertising copy, should be noted in connection with the preparation of this form.

(4) The Public Voucher for Advertising (Standard Form No. 1144—Revised) and memorandum therefor (Standard Form No. 1144a—Revised), will be used by publishers to bill their charges against the Department for advertising published in accordance with the advertising order (Standard Form No. 1143—Revised).

The original voucher for advertising (Standard Form No. 1144—Revised), is printed on the reverse of the original advertising order (Standard Form No. 1143—Revised). The memorandum voucher for advertising (Standard Form No. 1144a—Revised), is printed on the reverse of the memorandum advertising order (Standard Form No. 1143a—Revised). In no case will separate instruments be used for the ordering of advertising and the payment therefor. In connection with the use of this form instructions as set forth in paragraph (f) of this section should be followed.

(i) *Payment of accounts.* Upon receipt of Standard Forms Nos. 1144—Revised and 1144a—Revised, supported by proof of publication, rendered by a publisher, the office placing the advertisement will assemble and attach necessary supporting documents as circumstances dictate, certifying to the second certificate on the original Standard Form No. 1144—Revised, and submit the account in duplicate to the local Finance Officer for prompt payment to the publisher.

§ 591.202-5 *Synopses of invitations for bids.* Synopses of invitations for bids will be prepared by the principal purchasing offices listed in § 591.451-3 immediately upon completion of final approved drafts of invitations for bids.

(a) A synopsis of invitations for bids shall not include any invitations scheduled to be opened less than 18 days from date of issue.

(b) A synopsis of invitations for bids will be teletyped at the end of each day (or as they occur) to the following addressee:

Synopsis
Commerce Department
Field Service
Chicago, Illinois

(c) Teletype synopses will be prepared for transmission as follows:

(1) The first line of the text of the message will state the number of the synopsis being sent. The first synopsis on conversion will be numbered one, with each synopsis thereafter numbered consecutively.

(2) The second line of the text of the message will state the name of the purchasing office straight across the page (not to exceed 70 typewriter spaces) continuing on the next line if necessary.

(3) The description of the material will be in capital letters, using the dash

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for commas, and will not exceed 31 type-writer spaces. If 31 spaces are insufficient, additional lines may be used. The description will be clear, concise, abbreviated whenever possible, with a minimum number of words for description but sufficient for understanding by interested parties. Include citation to specification and/or drawing numbers or other identifying data, if this information will assist prospective bidders in determining whether or not they are interested in the procurement.

(4) The column designating the quantity begins on typewriter space 32 and will not exceed 10 spaces. Every effort should be made to center the quantity between spaces 32 and 41.

(5) The column designating the invitation number begins on typewriter space 42 and will not exceed 16 spaces. Every effort should be made to center the invitation number between spaces 42 and 57.

(6) The column designating the opening date begins on typewriter space 58 and will not exceed 13 spaces. Every effort should be made to center the opening date between spaces 58 and 70.

(7) Columnar headings have been omitted since it will not be necessary to transmit the headings if instructions in subparagraphs (3), (4), (5), and (6) of this paragraph are followed.

(8) Strict adherence to the above instructions will be required of each reporting office inasmuch as the receiving machines will automatically cut stencils at the time the message is received. Deviations will cause the format of the synopsis printed by the Department of Commerce to be out of line.

(d) Each reporting office will discuss the instructions contained in paragraph (c) of this section with their communications office so that the manner in which the message is to be transmitted is thoroughly understood by the office preparing the message and the communications office.

(e) Copies of synopses of invitations for bids, containing the information prescribed in paragraph (c) of this section, will be provided at purchasing offices for those who wish to pick them up. In addition to the information prescribed above, copies of synopses will contain appropriate columnar headings and a statement that any additional information desired and, if available, individual copies of invitations for bids may be obtained directly from the purchasing office issuing the synopsis.

(f) Information to bidders concerning awards is set forth in § 401.407 of this title and § 591.407. Instruction pertaining to synopses of awards are set forth in § 591.451.

(g) This section will apply only to procurement within the continental United States (48 States and the District of Columbia).

(h) Requirements for the distribution of single copies of invitations for bids are set forth in § 591.251.

§ 591.203 Retention of records. (a) Each procurement transaction file will be complete and copies of all documents, certified if necessary, will be included therein. Procurement transaction files

will be maintained in such a manner as to present a complete résumé of the transaction for historical record or such other purposes as may be required.

(b) Invitations for bids and abstracts of bids will be retained in the purchasing office for at least 6 years after date of award, unless retired sooner under special regulations.

§ 591.250 Identification of specifications. Each invitation for bids shall list for each item included therein the applicable specifications as authorized for procurement in § 590.305 (a) of this chapter, or will contain a description as provided in § 590.305 (c) of this chapter. Such reference to specifications shall include the title and symbols, with revision letters if any, and dates, including amendments if any, identified by numbers and dates.

§ 591.251 Distribution of invitation for bids. In addition to the distribution of invitations for bids to prospective bidders referred to in § 401.202-1 of this title and § 591.202-1, the following distribution shall be made.

(a) *Procurement Information Center.* One copy of every invitation for bids and one copy of every amendment to an invitation for bids shall be sent on the date issued directly to the Office of the Under Secretary of the Army, Procurement Information Center, The Pentagon, Washington 25, D. C. Letters of transmittal are not necessary. If an invitation is cancelled or is substantially changed by the issuance of an amendment which affects specifications, quantity requirements, delivery schedules, qualification of bidders, etc., a complete summary of the reasons for such cancellation or change will be furnished with the copy of the amendment forwarded to the Procurement Information Center. This statement should be detachable from the amendment.

(b) *Department of Commerce.* Single copies of invitations for bids (less copies of specifications, drawings, etc.) will be dispatched promptly by regular mail by each of the purchasing offices listed in § 591.451-3 to:

Small Business Division,
U. S. Department of Commerce,
Room 6427, Commerce Building,
Washington 25, D. C.

(c) *Equal or identical bids.* See § 591.406-4 (c) for distribution of copies of invitations for bids in connection with the procedure on the submission of information on equal or identical bids.

(d) *Classified purchases.* See Part 505 of this chapter for instructions as to the distribution of classified documents. In such cases, instead of the action indicated in paragraph (a) of this section, a letter will be forwarded to the office named therein, in substance as follows: This office has issued invitation for bids No. _____, dated _____, bids to be opened on _____, under Top Secret, Secret, Confidential, or Restricted Project No. _____.

(e) *Other internal distribution.* Heads of Procuring Activities may direct such additional internal distribution of invitations for bids as may be considered necessary.

§ 591.252 Amendments to invitations for bids. (a) Amendments to invitations for bids must be distributed to all recipients of the invitation, and such amendments shall provide that bidders are to sign and return the amendments prior to the opening of the bids. The date set for opening of bids shall be postponed when necessary to afford bidders sufficient time to return the amendments.

(b) Any information given to a prospective bidder on an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation if such information is necessary to bidders in submitting bids on the invitation, or if lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

(c) Amendments, if issued, will refer to the number, date of issue, and opening date of the original invitation, will clearly indicate the nature of the changes made therein, and will be numbered serially as issued. For example, the first amendment would be "Amendment 1."

SUBPART C—SUBMISSION OF BIDS

§ 591.350 Assistance in preparing bids. Persons employed by or serving with the Army Establishment will not under any circumstances render assistance to bidders in the preparation of bids.

§ 591.351 Copies of bids required in submission. Bidders will be required to submit a sufficient number of signed copies of their bids to meet the requirements for distribution of "signed numbers" of contracts as set forth in § 590.606 of this chapter.

§ 591.352 Statement of contingent or other fees. The prescribed procedure with respect to obtaining information concerning contingent or other fees paid by bidders or contractors for soliciting or securing Government contracts, including the use of U. S. Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract), is set forth in § 590.608 of this chapter.

SUBPART D—OPENING OF BIDS AND AWARD OF CONTRACT

§ 591.401 Opening of bids. (a) All bids received prior to the time of opening will be kept in a locked safe, locked file cabinet, or locked bid box and necessary precautions will be taken to ensure the security of the receptacle used for this purpose.

(b) The Contracting Officer will decide when the specified time has arrived, and will then personally and publicly open all bids received and read them aloud to the bidders present.

(c) The Contracting Officer will personally number one copy of each bid received, serially, in the order in which the bids are read, and will retain these numbered copies in his possession until

the accuracy of the abstract has been verified.

(d) The procedure described in paragraphs (b) and (c) of this section may be delegated to an assistant provided that the Contracting Officer retains full responsibilities for the actions of his subordinates.

(e) Pertinent questions asked at the opening will be fully answered, and the examination of bids by interested persons will be permitted as set forth in § 591.401, provided such action does not unduly interfere with the conduct of Government business.

(f) The opening of classified bids shall not be accessible to the general public. However, such opening may be witnessed and the results recorded by those suppliers' representatives who have been previously cleared from a security standpoint, if the supplier concerned submitted a bid. The bids shall be made available only to those persons authorized to attend the opening of the bids. (See Part 505 of this chapter for additional instructions governing classified projects.)

§ 591.402 Recording of bids—(a) Procedure. Only approved abstract of bid forms will be used for the recording of bids. For every invitation for bids, an abstract of bids form will be prepared as soon as practicable after bids have been opened or as soon as it is decided to cancel the invitation before opening bids. Since the copy of the abstract furnished to the Office of the Under Secretary of the Army, Procurement Information Center, is exhibited to the public, care will be exercised in making the entries on that copy. Information, such as debarment, irresponsibility, or apparent collusion of bidders, will not be entered on the abstract of bids, but will be the subject of a separate classified communication, addressed to the Under Secretary of the Army, Procurement Information Center, through the Assistant Chief of Staff, G-4, Department of the Army.

(b) *Certification of abstract.* (1) The person opening the bids will:

(i) Verify the accuracy of the abstract by comparing it with the numbered copies of the bid retained by him, and

(ii) Sign the certificate on the abstract that he has personally opened and read all bids and that he has verified the abstract and found it correct.

(2) The Contracting Officer canceling the invitation, making the awards or rejecting the bids will sign the appropriate certificate on the abstract as to the action taken by him.

(c) *Classified bids.* The record made of classified bids shall not be made available to the general public.

§ 591.403 Rejection of bids—(a) Failure to conform to essential requirements of invitation. Any bid which fails to conform to the essential requirements of the Invitation will be rejected, provided that any such bid may be considered when in the interest of the Government and not prejudicial to the other bidders.

(b) *Insertion of improper restrictions or conditions.* Restrictions or conditions in bids which ordinarily require their rejection are those where the bidder (1) attempts to protect himself against

future changes in conditions, such as increased costs, to the extent that the total possible cost to the Government cannot be determined, or (2) attempts to limit his liability. To allow the bidder to impose such conditions would make the obligation of the Government uncertain or indefinite and would be prejudicial to other bidders. A low bidder, however, may be requested to delete objectionable conditions from his bid. If a bid fails to state a price and in lieu thereof states that the price shall be "price in effect at time of delivery," or if a bid states a price but qualifies the stated price as being subject to "price in effect at time of delivery" and does not specifically limit the ultimate price to the Government, it shall be rejected; provided that, if such qualification is caused solely by language on a printed form as described in § 591.404, the bidder may be given the opportunity to state whether or not such qualification was intended. (See §§ 596.151 and 591.406 of this chapter with respect to the use of price escalation in procurements effected by formal advertising.)

(c) *Failure to conform to specifications.* Any bid which does not conform to the specifications shall be rejected unless the supplies offered are similar and equal to those specified in the Invitation. Bids offering supplies not similar and equal to those specified shall be rejected as consideration of such bids would be prejudicial to other bidders. If the results of the bidding indicate that the needs of the Government can be met by a less expensive article with different specifications, all bids for the item should be rejected and the requirement readvertised with appropriately revised specifications.

(d) *Failure to conform to delivery requirements.* A bid will not be rejected for failure to conform to the delivery requirements of the Invitation for Bids unless (1) the Invitation states that time of delivery is an important factor and will be considered in making the award or (2) the Contracting Officer determines that the delivery offered will not meet the needs of the Government or (3) the bid offers an indefinite and uncertain delivery, such as, "60 days after receipt of raw materials."

(e) *When in interest of Government.* All bids for any one item or for all items may be rejected if the Contracting Officer finds that such rejection is in the interest of the Government. Typical cases are those where (1) it is determined, prior to award, that the supplies are no longer required, (2) it appears that the specifications should be revised, or (3) the Invitation did not provide for consideration of all factors of cost to the Government.

(f) *Unreasonable bids.* Bids may be rejected if the Contracting Officer finds in writing that such bids are not reasonable. The Contracting Officer may make partial award to low bidders whose prices are considered reasonable and reject all other bids as unreasonable. All rejections of bids under this paragraph shall be reported through channels to the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), with complete information as to the facts thereto.

(g) *Collusive bids.* The Contracting Officer may reject all bids when he determines that the bids were not independently arrived at in open competition, or are collusive, or were submitted in bad faith; and he shall report such bids through channels to the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch). (See § 591.406-4 (b)).

(h) *Ineligible bidders.* (See § 590.303 (d) of this chapter).

(i) *Not responsible bidders.* (1) The lowest bid as to price may be rejected by the Contracting Officer if no bond has been required and the bidder is unable to furnish satisfactory evidence that he possesses the requisite experience, facilities, technical organization, and financial responsibility to perform the contract satisfactorily in accordance with the terms thereof.

(2) Prior to rejecting the lowest bid when it has been received from a firm believed not to be a source of supply, as defined in §§ 400.201-9 and 590.201-9 of this title, a request will be submitted to the Head of the Procuring Activity concerned for (i) a review of the facts and (ii) authority to reject the bid on the basis that the bidder does not qualify as a "source of supply." In forwarding such requests, Contracting Officers will be careful to verify all statements contained therein which are given as the basis for rejection, in order that there may be no just cause for complaint.

(j) *Notification of rejection of all bids.* When it has been decided to reject all bids and the lowest bid received is in excess of \$25,000, the Contracting Officer will, if otherwise expedient, notify each bidder of the fact that all bids have been rejected and the reason for such action.

§ 591.404 Minor informalities or irregularities in bids. Contracting officers will give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or in the alternative, when it is not to the disadvantage of the Government, may waive such deficiency when time does not permit the curing thereof. Illustrative examples of minor informalities or irregularities, in addition to those in § 401.404 of this title, are the following:

(a) Suppliers frequently submit with their bids additional information on letterheads or other forms which incorporate printed terms and conditions used by the supplier in his commercial business. These printed terms and conditions are very often in conflict with the General Provisions or may contain language affecting bid prices. Unless it clearly appears on the face of the bid that such terms and conditions are intended to be a part of the bid, the bidder shall be given an opportunity to state whether or not they are so intended. If the bidder submits a written statement that such terms and conditions were not intended to form a part of the bid, they may be disregarded in considering the bid.

(b) A bidder failing to furnish, (1) information regarding his aggregate number of employees, (2) his status as a source of supply as defined in §§ 400.201-

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9 and 590.201-9 of this title, or (3) the place of manufacture of the supplies being purchased, will be permitted to make such representations after the bid opening but prior to award.

§ 591.405 Mistakes in bids—(a) Submission to higher authority. (1) Cases referred to in § 401.405-2 of this title will be forwarded direct, without routing through intermediate channels, to the Assistant Chief of Staff, G-4, Department of the Army, Washington 25, D. C., Attn.: Chief, Current Procurement Branch. Cases referred to in § 401.405-3 of this title will be forwarded through normal channels (except that a direct submission may be made in cases requiring expeditious action) to the Assistant Chief of Staff, G-4, Department of the Army, Attn.: Chief, Current Procurement Branch.

(2) In cases where a time element is involved with respect to the necessity of immediate purchase, limited time allowed for acceptance of other bids, or other circumstances require such prompt action as to preclude the presentation of the matter by mail, Contracting Officers will use telegraphic, telephonic, or radio means, furnishing so far as possible in the statement of the case the information prescribed in § 401.405-2 of this title.

(b) Instructions to Contracting Officer. Instructions will be issued by the Assistant Chief of Staff, G-4, to the Head of the Procuring Activity, except that Contracting Officers may be notified directly in cases requiring expeditious action. Where deemed necessary or advisable by the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, individual cases, prior to the issuance of instructions, will be referred (through the Chief of Finance) to the Comptroller General for decision. Contracting Officers will not request decisions direct from the Comptroller General or prepare drafts of letters for submission to that official.

(c) Reports by Contracting Officer—(1) To Head of Procuring Activity. Reports of all actions taken and copies of all papers forwarded to the Assistant Chief of Staff, G-4, will be forwarded to the Head of the Procuring Activity concerned.

(2) To Disbursing Officer. The Contracting Officer will furnish a copy of such resulting instructions as he may receive, or copy of the decision of the Comptroller General, if any, to the Disbursing Officer making payments under the contract, in order that such instructions or decisions may be used by the Disbursing Officer in support of any payment made by him. In addition, the decision of the Comptroller General will also be cited by number and date on the copy of U. S. Standard Form No. 1036 or a copy of the decision securely attached to the form.

(3) U. S. Standard Form 1036. In the event of award involving a mistake in bid, the Statement and Certificate of Award (U. S. Standard Form 1036) will contain the information prescribed in § 591.405-5 (a).

§ 591.406 Award—(a) Making the award. When a Contracting Officer has

invited and received bids, he will make the award and execute the necessary papers, unless all bids are rejected. If an award requires the approval of higher authority, the award will not be made until such approval has been obtained.

(b) Price escalation. When bids are received including a provision for price escalation, which if added to the base price will still result in a lesser bid price with maximum escalation than that offered by a bidder submitting a fixed price bid, award will be made to the bidder whose maximum price is lowest to the Government and the bid is otherwise responsive to conditions of the invitation. (Price escalation clauses are set forth in § 596.151 of this chapter.)

(c) Delivery a factor. If time of delivery is an important factor in effecting the procurement of a required item, the invitation for bids will so state and delivery terms quoted in the bids will be considered in making the award. If the invitation for bids specified that delivery would be a factor in making award and if award is made to other than the lowest otherwise acceptable bidder, based on a shorter time for delivery, the formal award will state the successful bidder's delivery time and the price and delivery time of the lowest otherwise acceptable bidder.

§ 591.406-1 Responsible bidder. If the low bidder's qualifications to perform the proposed contract are not known to the Contracting Officer, the bidder's qualifications should be checked and if found unsatisfactory, award should not be made. Qualification checks should consist of both financial and technical evaluation of a supplier's capacity to perform the contract successfully.

§ 591.406-2 Discounts. Even in those cases, as set forth in § 401.406-2 of this title, where the discount is disregarded in the evaluation of bids; the award will state the discount offered as well as the bid price, in order that the Government may take the discount if payment is made within the time specified.

§ 591.406-3 Other factors to be considered. When the Contracting Officer determines that an award to other than the lowest responsible bidder would be more advantageous to the Government after a consideration of factors other than price, he will make a full statement in writing of the facts and circumstances and of the reasons for the action taken. The statement made by the Contracting Officer on U. S. Standard Form 1036 will ordinarily be considered sufficient for this purpose unless the circumstances of the case indicate that a fuller documentation, complete with all supporting evidence, should be made for the file.

§ 591.406-4 Equal bids—(a) Witnesses of drawing by lot. In the event award is made by a drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids.

(b) Submission of Information on equal or identical bids. (1) Whenever identical or equal bids are received pursuant to formal advertising by any purchasing office located within the continental United States, its Territories and possessions, and directly under the jurisdiction of the head of a technical service, the following procedure is prescribed with respect to the furnishing of information to the Department of Justice in connection with possible violation of the antitrust laws: One copy of each identical bid and one copy of the Abstract of Bids will be furnished to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), for transmittal to the Department of Justice when any of the following conditions occur:

(i) When any bid resulting from an advertised procurement is identical on its face to any other bid or bids whether the bidders are successful or not (discounts, delivery dates, distance from destination, and like matters need not be considered in determining whether or not the above-required documents should be submitted);

(ii) When bids arising from invitations which specify f. o. b. origin requiring computations (transportation, etc.) in making an award when the computations indicate that the ultimate price delivered is equal whether the bidders are successful or not.

(2) Any practices which come to the attention of any Contracting Officer in the Army Establishment which, while not indicated by submission of identical or equal bids, are indicative of collusive bidding, follow-the-leader pricing, related low bids, or uniform estimating systems will be referred to the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch), with the following documents, in single copy: the Invitation for Bids; the Abstract of Bids; the bid(s) of the Contractor(s) suspected of irregular practice; copies of the notice of award, if any, to any such bidder(s); and any other pertinent information available.

§ 591.406-5 Statement and Certificate of Award. (a) Where an award involves a mistake in bid and the matter has been resolved by administrative action, U. S. Standard Form 1036 will be accompanied by a copy of the resulting instructions as received in the premises, together with other documents as prescribed in § 401.405-2 of this title.

(b) Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, U. S. Standard Form 1036 will contain a citation by number and date of the decision or a copy thereof securely attached to the form.

§ 591.407 Information to bidders—(a) Unclassified awards. In the case of all unclassified formally advertised contracts, the purchasing office will (1) notify unsuccessful bidders of the fact that their bids were not accepted, and (2) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Should additional information be sought, purchasing offices will either (1) provide the unsuccessful bidder with the name and address of the successful bidder, together with the contract price, or (2) inform the inquirer that a copy of

the Abstract of Bids is available for inspection at the purchasing office.

(b) *Classified awards.* In the case of all classified formally advertised contracts, the purchasing office will (1) notify unsuccessful bidders of the fact that their bids were not accepted, and (2) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Information with respect to the name of the successful bidder and the contract price will be furnished only to properly cleared representatives of unsuccessful bidders and then only upon written request. This information may be furnished directly to the bidders concerned. No information regarding a classified opening may be furnished by telephone. (See also Part 505 of this chapter.)

(c) *Limitation.* (1) The procedures set forth above are not intended to apply to requests for general information as to purchases made over extended periods of time, such as one for information as to the number of parachutes purchased during a year and the prices paid therefor. Such requests will be returned, and the inquirer informed that it is not the policy of the Army Establishment to compile and disseminate such information.

(2) Mailing lists will not be established whereby certain addressees other than those prescribed in this Procedure will receive automatically information on all awards, or all information on awards in certain commodity fields.

(d) *Synopses of awards.* Procedures for the preparation and dissemination of synopses of awards are set forth in § 591.451.

§ 591.450 Distribution of bids and abstracts—(a) Contracting Officer. The original of all rejected and unsuccessful bids, a copy of the accepted bid, and a copy of the abstract of bids will be retained by the Contracting Officer. All rejected bids will be kept available for inspection by the duly authorized representatives of the General Accounting Office and will be forwarded to that office upon request therefor, when required in individual cases.

(b) *Head of Procuring Activity.* Abstracts and copies of bids will be forwarded to the Head of the Procuring Activity concerned only when specifically directed by him or when required by the instructions of the Procuring Activity.

(c) *Procurement Information Center.* Within 3 days after bids have been opened and final action taken thereon, a copy of the abstract of bids will be mailed to the Office, Under Secretary of the Army, Procurement Information Center, The Pentagon, Washington 25, D. C. If it is decided to cancel an invitation before the opening of bids, the Procurement Information Center will be advised of the cancellation by letter, amendment to the invitation or telegram. If all bids received are rejected, a complete summary of the reasons for such rejection will be furnished with the copy of the abstract of bids forwarded to the Procurement Information Center. This statement will be detachable from the abstract of bids. In addition, each

copy of the abstract of bids furnished the Procurement Information Center will have marked upon it the sum total dollar value of the procurement involved in the award or awards.

(d) *General Accounting Office.* (1) The original of the accepted bid will be attached to the signed number of the contract or award intended for the General Accounting Office.

(2) Where the lowest bid as to price is accepted; i. e., where the lowest bidder is determined from the price alone, no offsetting or equalizing elements being for consideration, and when a certificate (on reverse of U. S. Standard Form No. 1034, or U. S. Standard Form No. 1036, as the case may be) to that effect is furnished by a responsible administrative officer having personal knowledge of the facts, neither the rejected bids nor an abstract of the bids need be forwarded to the General Accounting Office with the contract. When the abstract of bids is not furnished to that office, the items accepted on any particular bid will be indicated on the original number of the bid which is to be furnished to that office.

(3) In all cases where other than the lowest bid as to price is accepted, there will be furnished the General Accounting Office on U. S. Standard Form No. 1036 (Statement and Certificate of Award) a detailed statement giving in full the reasons for the acceptance thereof, together with an abstract of all bids lower than the one accepted.

(e) *Extra copies of bids.* (1) Signed copies of bids not needed to comply with the foregoing requirements may be destroyed.

(2) If all bids are rejected, all but one original signed number of each bid may be destroyed.

§ 591.451 Synopses of awards. A weekly "Synopsis of Awards" on unclassified contracts entered into after formal advertising or negotiation in an amount of \$25,000 or more will be prepared in accordance with the instructions contained in §§ 591.451—591.451-3 by each of the purchasing offices listed in § 591.451-3.

§ 591.451-1 Information to be included. Each synopsis of awards will contain the name of the purchasing office, name and address of the contractor, brief description of the commodity or service being procured.

§ 591.451-2 Distribution. One copy of each synopsis of awards will be sent by air mail before the close of business at the end of each week by each reporting office to the addressees listed below:

Procurement Information Center,
Department of the Army,
Room 3D-745, The Pentagon,
Washington 25, D. C.

Administrative Office,
U. S. Department of Commerce,
Room 1014, 610 South Canal Street,
Chicago 7, Ill.

Small Business Division,
U. S. Department of Commerce,
Room 6427, Commerce Building,
Washington 25, D. C.

Office of Public Information,
Office of the Secretary of Defense,
Room 2E-784, The Pentagon,
Washington 25, D. C.

(If past experience indicates that regular mail will insure Monday delivery to any addressee, air mail will not be necessary.)

§ 591.451-3 Principal purchasing offices. For the purpose of preparing and disseminating information in connection with synopses of invitations for bids as required by § 591.202-5, and synopses of awards as required by §§ 591.451 through 591.451-3, the following are designated as principal purchasing offices of the Army Establishment:

(a) Chief, Publishing Section, Army Publications Service Branch, The Adjutant General's Office, Washington 25, D. C.

(b) Chief, Chicago Procurement Office, Corps of Engineers, 225 West Jackson Boulevard, Chicago 6, Ill.

(c) Division Engineer, South Atlantic Division, Lumber Branch, Corps of Engineers, P. O. Box 1889, 536 Old Post Office Building, Atlanta 1, Ga.

(d) District Engineer, Portland District, Lumber Branch, Corps of Engineers, 500 Pittock Block SW., Tenth Avenue and Washington Street, Portland 5, Oreg.

(e) Commanding Officer, Marietta Transportation Corps Depot, Marietta, Pa.

(f) Commanding Officer, Oakland Quartermaster Procurement Agency, Purchasing Division, Oakland Army Base, Oakland 14, Calif.

(g) Commanding General, New York Quartermaster Procurement Agency, 111 East Sixteenth Street, New York 3, N. Y.

(h) Quartermaster Supply Officer, Columbus General Depot, U. S. Army, Columbus 15, Ohio.

(i) Commanding Officer, Chicago Quartermaster Depot, Purchasing Division, 1819 West Pershing Road, Chicago 9, Ill.

(j) Commanding Officer, Chemical Corps Procurement Agency, Army Chemical Center, Maryland.

(k) Commanding Officer, Boston Chemical Procurement District, Boston Army Base, Boston 10, Mass.

(l) Commanding Officer, Dallas Chemical Procurement District, 1114 Commerce Street, Dallas 2, Tex.

(m) Commanding Officer, Chicago Chemical Procurement District, 226 West Jackson Boulevard, Chicago 6, Ill.

(n) Commanding Officer, New York Chemical Procurement District, 111 East Sixteenth Street, New York 3, N. Y.

(o) Commanding General, Aberdeen Proving Ground, Aberdeen, Md.

(p) Commanding Officer, Detroit Arsenal, Centerline, Mich.

(q) Commanding General, Ordnance Tank Automotive Center, 1501 Beard Street, Detroit 9, Mich.

(r) Commanding Officer, Frankford Arsenal, Philadelphia 37, Pa.

(s) Commanding Officer, Picatinny Arsenal, Dover, N. J.

(t) Commanding Officer, Raritan Arsenal, Metuchen, N. J.

(u) Commanding Officer, Rock Island Arsenal, Rock Island, Ill.

(v) Commanding Officer, Springfield Armory, Springfield 1, Mass.

(w) Commanding Officer, Watertown Arsenal, Watertown 72, Mass.

(x) Commanding Officer, Watervliet Arsenal, Watervliet, N. Y.

(y) Commanding Officer, Rossford Ordnance Depot, Toledo 1, Ohio.

(z) Commanding Officer, Signal Corps Procurement Agency, 2300 South Twentieth Street, Philadelphia 45, Pa.

(aa) Commanding Officer, Armed Services Medical Procurement Agency, 84 Sands Street, Brooklyn 1, N. Y.

§ 591.452 Protests. Protests or objections by bidders, or others having a legitimate interest, to action taken or to

be taken by a Contracting Officer in connection with a particular procurement will be settled by the Contracting Officer subject to such limitations as may be imposed by the Head of the Procuring Activity concerned and subject to the following instructions:

(a) Where protest is made prior to making award, the award will not be made pending resolution of the protest, except that awards may be made in such cases where the items to be procured are urgently required, delivery will be unduly delayed or it is otherwise in the best interests of the Government.

(b) Where in the opinion of the Contracting Officer it is desirable and in the best interests of the Government the Contracting Officer will submit the protest to higher authority for final resolution.

(c) Where the person making the protest has indicated he intends to carry the protest to a certain higher level of authority, the Contracting Officer will submit the protest through channels to the indicated level of authority for final resolution.

(d) Where a protest affects or involves another bidder or any other person, the Contracting Officer will give prompt notice of the protest to such parties, where feasible or desirable, in order that, if the concerned parties so desire, they may take action or offer a statement or evidence in their own behalf.

(e) Protests submitted for final resolution to levels of authority higher than the Head of a Procuring Activity will be forwarded to the Assistant Chief of Staff, G-4, Department of the Army, Attn.: Chief, Current Procurement Branch.

(f) In submitting protests to higher authority, the Contracting Officer will forward a completely documented case, including the following:

(1) A signed statement from the person making the protest setting forth the complete facts on which the protest is based together with any additional supporting evidence.

(2) A signed statement, when relevant, from other persons or bidders affected by or involved in the protest, setting forth the complete facts with respect to their position in the matter, together with any additional supporting evidence.

(3) A copy of the bid of the protesting bidder and a copy of the bid of the bidder to whom the award has been made or who is being considered for award, if relevant to the protest.

(4) A copy of the invitation for bids including, where practicable, pertinent specifications, if relevant to the protest.

(5) A copy of the abstract of bids.

(6) Any other documents which are relevant to the protest.

(7) A signed statement from the Contracting Officer setting forth his findings, actions and recommendations in the matter together with any additional information and evidence deemed to be necessary in determining the validity of the protest.

(g) Protest cases submitted by Contracting Officers to higher levels of authority for forwarding to Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch) will contain the recom-

mendations of such intervening levels of authority through which the protest is transmitted.

§ 591.453 Cancellation of invitations and readvertisement after opening of bids. (a) To aid in maintaining the integrity of the competitive bid system in procurement by formal advertising, invitations for bids normally shall not be canceled and readvertised after bids have been opened, since such a procedure discloses the offers of all bidders and may be prejudicial to all bidders, particularly to the low bidder.

(b) Exceptions to this general rule may be made in certain instances, such as, change in specifications after opening of the bids or a determination that a substitute item will best meet the needs of the Government.

(c) As a general rule, invitations for bids should not be canceled and readvertised after the bids have been opened solely due to an increase in the quantity required. In such a case award should ordinarily be made on the original invitation, and the additional quantity should be treated as a new procurement.

(d) In the event of a change in specifications or conditions of the invitation, prior to the date of opening of bids, the invitation should be amended rather than be canceled with subsequent readvertisement. In such instances, the date of opening of bids should be extended sufficiently so that all bidders may have adequate opportunity to examine the amended requirements and submit their bids.

SUBPART E—QUALIFIED PRODUCTS

§ 591.501 Authority for qualified products. Requirements for qualification of products may be established in a specification whenever one or more of the conditions listed in § 401.502 of this title exists.

§ 591.504 Qualified products lists. Military Qualified Products Lists for items covered by Military Specifications or U. S. Army Specifications containing qualification testing requirements will be subject to the provisions in Subpart E of Part 401 of this title, except that in the case of Military Qualified Products Lists for products covered by uncoordinated Military or U. S. Army Specifications the following will apply:

(a) *Maintenance, reproduction and distribution of lists.* The Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, will maintain a file of approved Military Qualified Products Lists for reference and information purposes. The reproduction and distribution of Military Qualified Products Lists for uncoordinated Military or U. S. Army Specifications, including changes thereto, will be made by the activity having custodianship of the specification concerned. Lists of products, amendments, or revisions shall not be distributed until approval has been obtained from the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch).

(b) *Approval of lists.* The custodian technical service of an uncoordinated Military or a U. S. Army specification containing qualification testing require-

ments will forward duplicate copies of proposed lists of those products which have been tested and found to meet the qualification requirements of the applicable specifications and amendments or revisions thereof to the Assistant Chief of Staff, G-4, Attn.: Chief, Current Procurement Branch, for approval.

PART 592—PROCUREMENT BY NEGOTIATION

Sec. 592.000 Scope of part.

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AUTHORITY: §§ 592.000 to 592.551 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 592.000 Scope of Part. This part sets forth Army Establishment policies and procedures for the procurement of supplies and services by means of negotiation consistent with and supplementary to the provisions of Part 402 of this title.

SUBPART A—USE OF NEGOTIATION

§ 592.101 Negotiation as distinguished from formal advertising—(a) Competition. The fact that a procurement is to be negotiated does not relax the requirements for competition. When supplies or services are to be procured by negotiation and when consistent with the accomplishment of procurement objectives, quotations or proposals will be solicited from all such qualified sources of supplies (as defined in §§ 400.201-9 and 590.201-9 of this title) or services as are deemed necessary to insure effective competition in order that the procurement be made to the best advantage of the Government, price and other factors considered, in accordance with the basic policies set forth in Subpart C of Part 400 and Part 590 of this title.

(b) **Conduct of negotiations.** Procurement by negotiation is less automatic than and does not have the rigid limitations of formal advertising, bid and award procedures; it allows to a greater extent than formal advertising the exercise of sound business judgment but in no way decreases the responsibility for properly protecting the interests of the Government.

(1) Contracting Officers should conduct contract negotiations to the best advantage of the Government. They may bargain with any number of interested suppliers at any time prior to the award of a contract, as deemed desirable and practicable. After receipt of the initial proposals, separate negotiations may be conducted with any source of supply submitting an offer. The contract should be placed with the supplier making the best final proposal and who has the requisite ability to perform.

(2) Negotiation in accordance with the provisions of § 592.101 will be accomplished to the end that maximum pricing benefits from all negotiated transactions may be realized. Benefits are obtainable through complete negotiation of transactions, particularly when one or several of the proposals indicate, or it is otherwise evident, that further negotiation may result in better pricing. During negotiations potential suppliers must be informed of the provisions which will appear in the contract to be executed. (See also § 402.401 of this title and § 592.401).

(3) An informal record indicating the firms or persons invited to submit proposals and the quotations offered by those submitting proposals will be retained in the files of the Contracting Officer.

(c) **Requests for proposals.** (1) When a procurement of supplies or services is to be announced in writing to prospective contractors for the purpose of requesting quotations and other terms as a basis for conducting negotiations, a request for proposals similar to WD Form 104 (Request for Proposal and Contractor's Proposal, Short Form) or WD Form 105 (Request for Proposals and Contractor's Proposal, Long Form) will be issued. (See §§ 596.577 and 596.578 of this title.)

(2) Requests for proposals should contain substantially the same information as required for invitations for bids as set forth in § 401.201 of this title, except when inapplicable to negotiated procurements. They should also state that the Government reserves the right to reject all quotations received.

(3) Invitation for Bids forms used in formal advertising, such as U. S. Standard Forms 30 and 33, will not be used in procurement by negotiation for the purpose of soliciting quotations or proposals.

(4) Each written request for proposals should list for each item included therein the applicable specifications as authorized for procurement in § 590.305 (a) of this chapter or will contain a description as provided in § 590.305 (c) of this chapter. Such reference to specifications will include the title and symbols, with revision letters if any, and dates,

including amendments if any, identified by numbers and dates.

§ 592.102 General requirements for negotiation. No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(a) The contemplated procurement comes within one of the circumstances permitting negotiation enumerated in Subpart B of Part 402 of this title.

(b) Any necessary determination and findings prescribed in Subpart C of Part 402 of this title and of this part have been made.

(c) Such clearances or approvals have been obtained as are prescribed by this Procedure and applicable Procuring Activity instructions (see § 590.604 of this chapter).

(d) The requirements of § 590.403 of this chapter have been satisfied.

§ 592.103 Records and reports of negotiated contracts. Report required by § 402.103 of this title will be made in the form and manner prescribed in Subpart H of Part 590 of this chapter.

§ 592.150 Release of price information and notification to unsuccessful suppliers.

(a) In the case of all unclassified negotiated contracts, the purchasing office will notify unsuccessful suppliers who submitted quotations of the fact that their proposals were not accepted and extend the appreciation of the purchasing office for the interest the unsuccessful supplier has shown in submitting a proposal or quotation. Should additional information be sought by suppliers who submitted quotations, purchasing offices will furnish the name and address of the successful supplier and the actual or approximate contract price, if practicable, but, as a general rule, will not reveal the names of other unsuccessful suppliers or the amounts and conditions of their quotations.

(b) In no event shall cost breakdowns or other cost or profit information submitted by any supplier be revealed to any other supplier.

(c) Classified information concerning a negotiated contract will not be furnished by telephone. (See Part 505 of this chapter.)

§ 592.151 Synopsis of awards. A weekly Synopsis of Awards on unclassified negotiated contracts in amounts of \$25,000 or more will be prepared in accordance with the instructions contained in § 591.451 of this chapter by each of the purchasing offices listed in § 591.451-3 of this chapter.

§ 592.152 Statement of Contingent or other fees. The prescribed procedure with respect to obtaining information concerning contingent or other fees paid by suppliers or contractors for soliciting or securing Government contracts, including the use of U. S. Standard Form 119 (Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract), is set forth in § 590.608 of this chapter.

§ 592.153 F. o. b. purchasing policy. The policy with respect to purchasing f. o. b. origin or destination is set forth in § 590.350 of this chapter.

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§ 592.154 Small business. To the maximum extent possible, restrictions which might prevent small business participation will be eliminated from proposed procurements. (See §§ 400.302-3 and 590.302-3 of this title.)

§ 592.155 Qualified products. Qualified Products Lists may be used in procurement by negotiation in accordance with the policy and procedures set forth in Subpart E of Part 401 and Part 591 of this title.

SUBPART B—CIRCUMSTANCES PERMITTING NEGOTIATION

§ 592.200 Scope of subpart. Subject to the limitations prescribed in this part and Part 402 of this title, and pursuant to the authority of section 2 (c) of the Armed Services Procurement Act of 1947, procurement may be effected by negotiation, and contracts may be entered as a result of negotiation without formal advertising, under any one of the circumstances set forth in Subpart B of Part 402 of this title and the following sections of this subpart.

§ 592.201 National emergency.

§ 592.201-2 Application. (a) This authority shall be used only to the extent determined by the Secretary to be necessary in the public interest during a period of national emergency declared by the President or by Congress. During periods of national emergency when such a determination has been made by the Secretary, all negotiated procurement will be accomplished under § 402.201 of this title and this section and will cite as authority section 2 (c) (1) of the Armed Services Procurement Act of 1947.

(b) A national emergency having been declared by the President on 16 December 1950, the Secretary has made the determination set forth below in accordance with paragraph (a) above. Accordingly, all contracts entered into by negotiation will cite as authority section 2 (c) (1) of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.) and Presidential Proclamation 2914. During the period of the national emergency, §§ 402.202 through 402.218 of this title and §§ 592.202 through 592.218 will not be used as authority to negotiate.

DEPARTMENT OF THE ARMY

DETERMINATION

Authority To Negotiate During Period of National Emergency

18 DEC. 1950

1. A National Emergency having been declared by the President of the United States on 16 December 1950, I hereby determine in accordance with section 2 (c) (1) of the Armed Services Procurement Act of 1947, that it is necessary in the public interest that, to the extent provided in paragraph 2 hereof, purchases and contracts under said act be negotiated without formal advertising during the period of said National Emergency.

2. Accordingly, I hereby authorize the negotiation of purchases and contracts for supplies and services by the Department of the Army under Section 2 (c) (1) of the Armed Services Procurement Act of 1947 during the period of said National Emergency.

(Signed) ARCHIBALD S. ALEXANDER,
Under Secretary of the Army.

(c) U. S. Standard Form 1036 (Statement and Certificate of Award) will not

be used to support contracts negotiated under section 2 (c) (1) of the Armed Services Procurement Act of 1947.

§ 592.202 Public exigency. (See § 592.201.)

§ 592.202-2 Application. (a) Section 2 (c) (2) of the Armed Services Procurement Act of 1947 may be used as authority for negotiating a contract if the compelling and urgent need for the supplies or services to be purchased is within the limitations of § 402.202 of this title and §§ 592.202-592.202-3. In using this authority, Contracting Officers will assure themselves that the need for negotiating is sufficiently compelling and of unusual urgency, and that the emergency situation requires an immediate purchase for which delivery cannot be effected within the time required by means of formal advertising.

(b) When negotiating under this authority, informal competition to the maximum extent practicable within the time allowed will be obtained.

(c) A procurement of material to effect necessary and emergency repairs to a broken water main would be appropriate under § 402.202 of this title and this section, provided that the emergency conditions require immediate replacement of defective materials. This authority could also properly be cited for the emergency procurement of packing material required to effect an emergency air or rail shipment. Also if a procurement is appropriate and proper and is considered an emergency procurement of a high priority nature and which could not otherwise be procured by formal advertising within the time required for delivery, the circumstances involved in the particular procurement, such as for supplies urgently needed to lend military support in connection with a national or international situation or to meet immediately emergency needs of an Army expansion program, may be used to add support to the justification required to be made by the Contracting Officer. The facts bearing on the emergency situation, however, must clearly be shown in the justification in sufficient detail to explain clearly the necessity for purchasing without formal advertising. The Contracting Officer's justification must be supported by the existence of specific emergency circumstances which in themselves relate to the particular purchase being effected.

(d) A short delivery or performance requirement in itself is not a sole justification for the use of section 2 (c) (2) of the Armed Services Procurement Act of 1947. The reasons for effecting delivery or performance by a certain date must be of such a nature that they will fully support the Contracting Officer's action in the event he finds it necessary to use this authority. When delivery requirements are of the utmost importance, officials supervising the issuance of procurement directives to Contracting Officers will be responsible for clearly indicating in the directives the exigent importance for having the supplies delivered by certain dates, including pertinent data as to the reasons therefor.

In this connection, Contracting Officers should not be expected or required to

negotiate contracts under this authority unless facts sufficient to support their actions can be presented to them in writing by responsible persons in positions of higher authority.

(e) Section 2 (c) (2), Armed Services Procurement Act of 1947, and § 402.202 of this title will not be used as authority to negotiate when the procurement is such that it can be negotiated properly under the provisions of §§ 402.203, 402.205, 402.211, 402.213, 402.214, or 402.216 of this title.

(f) Section 2 (c) (2), Armed Services Procurement Act of 1947, and § 402.202 of this title will not be used as authority to negotiate supplemental agreements to basic contracts supported by a Determination and Findings signed by the Secretary, except (1) when all the requirements of § 402.202 of this title and this section have been satisfied, and (2) when the supplemental agreement is for the purpose of expediting delivery or performance, such as through the use of overtime or extra-pay shifts.

§ 592.202-3 Limitation. A copy of the Contracting Officer's signed statement justifying the use of this authority required by § 402.202-3 of this title will be attached to the request for approval of award, if such approval is required by § 590.604 of this chapter.

§ 592.203 Purchases not in excess of \$1,000. (See § 592.201.)

§ 592.203-2 Application. (a) If the aggregate amount required does not exceed \$1,000, the Contracting Officer may procure by negotiation under section 2 (c) of the Armed Services Procurement Act of 1947, or he may effect the procurement by formal advertising in accordance with Parts 401 and 591 of this title.

(b) This authorization does not modify in any respect the fundamental principle that supplies and services will be obtained as the result of competition and, in general, at least two informal quotations of prices will be requested from sources of supply, as defined in §§ 400.201-9 and 590.201-9 of this title. When circumstances permit, quotations will be solicited from all such qualified sources as are deemed necessary by the Contracting Officer to assure full and free competition consistent with the procurement. The order then will be placed with that responsible supplier whose quotation, price and other factors considered, will be most advantageous to the Government. The absence of competition in any particular case will be explained fully and made of record in the retained files of the Contracting Officer. Likewise, such a record also will be maintained of any verbal or telephonic quotations that may be received in connection with purchases made under this authority.

(c) The authorization contained in this section will be used in negotiating purchases aggregating \$1,000 or less rather than any of the other authorizations contained in Subpart B of Part 402 of this title and of this part, except when section 2 (c) (1) of the Armed Services Procurement Act of 1947 is authorized for use. (See § 592.201.)

(d) The words "aggregate amount involved" do not require that the purchase should be limited to any particular period of time, as a day, month, or year, or limited to purchases made from a single firm. The aggregate should include all supplies which are grouped together properly in a single transaction and which would be included in a single advertisement for bids if formal advertising were resorted to. Purchases arising from the same need of the same articles should not be made more frequently than the necessities of the service require, in order to limit the aggregate in each case to \$1,000, and supplies which are usually purchased together should not be divided simply for the purpose of avoiding advertising for the same. If the character of the supplies is such that good administration would require their purchase in quantities sufficient to last a month, purchases should not be made weekly or daily for the purpose of bringing the amount within the limit authorized. Subject to the above considerations, the matter is one depending upon the sound discretion of the Contracting Officer.

(e) The purchase of similar articles at the same time from different firms or on different dates from the same or different firms when the purchases should have been combined and the aggregate is in excess of \$1,000 is not authorized. Hence, when the articles purchased or the amounts of purchases are such that, without explanation, it is not readily discernible why the purchases were not combined, a statement that the Contracting Officer could not have foreseen and combined the requirements in sufficient time to permit formal advertising will be retained in the files of the Contracting Officer pertaining to such transactions.

(f) Instructions covering the small purchases procedure by use of DA AGO Form 383 (Order and Voucher for Purchase of Supplies or Services Other Than Personal) are contained in Part 590, Subpart G, of this chapter.

§ 592.204 Personal or professional services. (See § 592.201.)

§ 592.204-2 Application—(a) Services authorized. Section 2 (c) (4) of the Armed Services Procurement Act of 1947 shall be used as authority to negotiate personal or professional service contracts only when all of the conditions set forth in § 402.204-2 of this title have been satisfied. Architect-Engineer contracts which wholly or partially involve the procurement of personal services will be entered into under the authority of section 15 of the Act approved 2 August 1946 (60 Stat. 810; 5 U. S. C. 55a).

(b) **Approval required.** Each contract for personal or professional services negotiated under this or any other authority and each supplemental agreement or change order making a material change in such contract, will contain a provision stating that it is subject to the approval of the Secretary and will not be binding until so approved; and the contract, award of contract, supplemental agreement or change order will be forwarded by the Head of the Procuring Activity involved to the Assistant

Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), for approval by the Secretary as required by § 590.604-1 of this chapter. Approval of award requirements for Architect-Engineer contracts are set forth in § 590.604-4 of this chapter.

(1) The Head of the Procuring Activity in recommending approval will refer specifically to the applicable statutory authorizations and will furnish a complete statement of facts supporting the determinations required by statute to be made by the Secretary.

(2) The request for approval will include the information required by § 590.605 of this chapter, if applicable, and will contain a statement as to the availability of funds and include reference to the Project Account Number, Appropriation Symbol, and statutory authority under which appropriated.

(3) The request for approval shall contain a statement or be accompanied by a certificate, substantially as set forth below, and such request or certificate shall be personally signed by the Head of the Procuring Activity, his Deputy or his Chief of Staff:

The proposed contract is advantageous to and necessary for the national defense; existing facilities of the Army are inadequate to accomplish the required services, and compensation specified therein is considered reasonable.

(c) **Specific statutory authorizations.** (1) The following are illustrative of statutory authorizations generally applicable to contracts for personal or professional services.

(i) Section 15 of the act approved August 2, 1946 (5 U. S. C. 55a) which provides:

The head of any Department, when authorized in an appropriation or other act, may procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract, and in such cases such services shall be without regard to the civil service and classification laws (but as to agencies subject to the Classification Act at rates not in excess of per diem equivalent of the highest rate payable under the Classification Act, unless other rates are specifically provided in the appropriation or other law) and, except in the case of stenographic reporting services by organizations, without regard to section 3709, Revised Statutes, as amended by this act.

(ii) Section 601, Defense Appropriation Act, 1951 (Pub. Law 759, 81st Cong.) approved September 6, 1950, which provides:

During the current fiscal year, the Secretary of Defense and the Secretaries of the Air Force, the Army, and the Navy, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the Act of August 2, 1946 (5 U. S. C. 55a), but at rates for individuals not in excess of \$50 per day, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty stations and return as may be authorized by law: *Provided*, That such contracts may be renewed annually.

(2) Each personal or professional service contract, supplemental agreement or change order negotiated under this authority will cite the specific authorizations applicable to the procurement in addition to the citations required by § 400.102 of this title.

(d) **Limitation on compensation.** When with an individual, each personal or professional service contract will expressly limit the compensation payable to him to not more than \$50 per day, plus travel expenses, including actual transportation and per diem in lieu of subsistence while traveling from his home or place of business to official duty stations and return.

(e) **National emergency.** During a period of national emergency when section 2 (c) (1) of the Armed Services Procurement Act of 1947 has been authorized for use, the requirements of this paragraph with respect to the provisions of section 15 of the act approved August 2, 1946 (Pub. Law 600, 79th Cong.) and the approval required by paragraph (b) of this section are applicable even though the contract is negotiated under the authority of section 2 (c) (1) rather than section 2 (c) (4) of the Armed Services Procurement Act of 1947.

§ 592.205 Services of educational institutions. (See § 592.201.)

§ 592.205-2 Application. (a) For use as a general guide, the phrase "other educational institution," as used in § 402.205 of this title and this section is defined as follows:

Any legal entity in the field of education organized and operated for the purpose of advancement of knowledge through study, training, or investigation, and which is not operated for a profit or no part of the earnings of which inure to the benefit of any individual directly or indirectly, may be considered as an educational institution.

(b) In negotiating a contract under this authority for experimental, developmental, or research work with a prospective contractor who may qualify under the "other educational institution" provision, a statement will be obtained from the prospective contractor as to whether he can qualify as an educational institution, such statement to be supported by conclusive evidence of his contention. The following are illustrative of supporting evidence which may be furnished.

(1) Acceptance by the Bureau of Internal Revenue as an educational institution.

(2) State recognition as an educational institution.

(3) Charter of the institution.

(4) Other evidence of the nonprofit character of the institution.

(c) Contracts negotiated under this authority will be supported by a Determination and Findings signed by the Secretary, as required by § 592.302 and in the form prescribed by § 592.305, when the amount involved exceeds \$25,000 and is for other than tuition contracts for military students.

(d) All requests for authority to negotiate contracts for experimental, developmental, or research work submitted for approval and signature of the Secretary will be supplemented by the following information:

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(1) If the authority to negotiate pertains to an extension of a contract, the date of original contract, together with total funds obligated under previous contracts, will be stated.

(2) A summary will be furnished of what has been completed to date under previous contracts and what is anticipated under the proposed contract.

(3) An estimate of the time necessary to complete the work.

(4) Department of the Army project number and technical objective classification.

(5) In those cases where the work covered by the proposed contract is in a field for which primary cognizance has been assigned to another technical service, a statement will be required that the cognizant service concurs in the proposed contract.

(6) A statement of the maximum current fiscal year obligation approved by Research and Development Board for the operational category or other controlling element under which the supported project is classified.

(7) The total amount previously obligated in the current fiscal year under the operational category or other controlling element under which the supported project is classified, plus the amount which may be in the process of obligation (i. e., forwarded but not yet approved for negotiation by the Under Secretary or Head of the Procuring Activity), but exclusive of the instant request.

(8) If Army Research and Development funds are not involved, a statement will be included as to what funds are available and will be obligated for the procurement.

(9) If additional extensions are anticipated, a statement will be furnished as to the amount of the estimated additional expenditure. If extensions are not anticipated, it should be so stated.

§ 592.206 Purchases outside the United States. (See § 592.201.)

§ 592.206-2 Application. Procurements of the types described in §§ 402.205, 402.211, 402.214 and 402.216 of this title and §§ 592.205, 592.211, 592.214, and 592.216 are not contemplated outside the United States, its territories and possessions. If, nevertheless, such procurements are effected outside the United States, its territories and possessions, the limitations and procedures specified in the above mentioned sections will apply and the statutory authority prescribed therein will be used in lieu of the authority prescribed by § 402.206 of this title.

§ 592.207 Medicines or medical supplies. (See § 592.201.)

§ 592.207-2 Application—(a) Competition. In negotiating under this authority, the Contracting Officer will insure that full and free competition is solicited. In cases when supplies identified by brand or trade names are required (no specification being applicable thereto), and when such supplies cannot be purchased direct from the sole manufacturer, the informal solicitation for proposals should extend to as many known wholesale sources of supply han-

dling the particular brand required as practicable.

(b) *Advance publicity.* In those purchases exceeding \$10,000 negotiated under this authority, the form and extent of suitable advance publicity (which will be given for a period of at least 15 days whenever practicable) will be determined in accordance with instructions prescribed by each respective Procuring Activity.

§ 592.208 Supplies purchased for authorized resale. (See § 592.201.)

§ 592.208-2 Application—(a) Competition. In negotiating under this authority, the Contracting Officer shall insure that full and free competition is solicited. In cases when supplies identified by brand or trade names are required, and when such supplies cannot be purchased direct from the sole manufacturer, the informal solicitation for proposals should extend to as many known wholesale sources of supply handling the particular brand required as practicable.

(b) *Advance publicity.* In those purchases exceeding \$10,000 negotiated under this authority, the form and extent of suitable advance publicity (which will be given for a period of at least 15 days whenever practicable) will be determined in accordance with instructions prescribed by each respective Procuring Activity.

§ 592.209 Perishable subsistence. (See § 592.201.)

§ 592.209-2 Application. In negotiating under this authority, "perishable subsistence" shall be construed to mean those items of food determined to be of a perishable nature (as distinguished from nonperishable subsistence) by The Quartermaster General.

§ 592.210 Supplies or services for which it is impracticable to secure competition by formal advertising. (See § 592.201.)

§ 592.210-2 Application. (a) Section 2 (c) (10) of the Armed Services Procurement Act of 1947 may be used as an authority for negotiating a contract if the circumstances involved in the particular procurement are similar to the examples set forth in § 402.210-2 of this title. Care and sound judgment, however, will be exercised to prevent abusive use of this authority.

(b) The signed statement of justification required by § 402.210-3 of this title need not be in the form of a formal Determination and Findings; a simple narrative statement or certificate signed by the Contracting Officer will fulfill the requirement. A copy of such statement or certificate will be attached to requests for approval of awards, if such approval is required by § 590.604 of this chapter.

(c) Contracts negotiated under this authority will be supported by a Determination and Findings signed by the Secretary, as required by § 592.302 and in the form prescribed by § 592.305, when for studies or surveys covering Industrial Mobilization Planning Phase I Studies exceeding \$12,000 in lieu of the Contracting Officer's signed statement or

certificate referred to in paragraph (b) of this section.

§ 592.210-3 Limitation. The authority contained in § 402.210 of this title and §§ 592.210—592.210-3 will not be used when the procurement can be negotiated under §§ 402.201, 402.205, 402.211 through 402.216 of this title, and §§ 592.201, 592.205, and 592.211 through 592.216.

§ 592.211 Experimental, development, or research work. (See § 592.201.)

§ 592.211-3 Limitation. (a) If the negotiation of a contract pursuant to the authority contained in § 402.211 of this title and this § 592.211-3 is supported by a Determination and Findings, signed in good faith by the Head of a Procuring Activity, which necessarily contemplates the entering into a contract obligating \$25,000 or less, but, after negotiations are completed, the contract to be entered into will obligate more than \$25,000, such contract must be supported by a Determination and Findings signed by the Secretary as required by § 402.302 of this title.

(b) Any supplemental agreement, change order, or modification of a contract negotiated under this authority, which has the effect of increasing the initial contract price so that the total amount exceeds the monetary limitation beyond which the Head of the Procuring Activity is not delegated authority to sign a Determination and Findings, will be supported by a Determination and Findings signed by the Secretary as required by § 402.302 and § 592.302 of this title and in the form prescribed by § 592.305.

(c) Subsequent to the time a research and development project is initially established and approved by the appropriate technical committee, the Secretary, pursuant to section 7 (a) of the Armed Services Procurement Act of 1947, will consider for approval and signature those Class Determinations and Findings submitted under this authority which pertain to a single unique problem or device and involve one or more negotiated contracts or purchases directly related to the single unique problem or device. At the time of requesting such a determination, the estimated total cost and number of all the negotiated contracts proposed to be executed under the authority of the class determination will be specified. Such determinations will cover a specified period of time and be prepared and submitted in the manner and form prescribed by § 592.305 (b).

(d) All requests for authority to negotiate contracts for experimental, developmental, or research work submitted for approval and signature of the Secretary will be supplemented by the following information:

(1) If the authority to negotiate pertains to an extension of a contract, the date of original contract, together with total funds obligated under previous contracts, shall be stated.

(2) A summary shall be furnished of what has been completed to date under previous contracts and what is anticipated under the proposed contract.

(3) An estimate of the time necessary to complete the work.

(4) Department of the Army project number and technical objective classification.

(5) In those cases where the work covered by the proposed contract is in a field for which primary cognizance has been assigned to another technical service, a statement will be required that the cognizant service concurs in the proposed contract.

(6) A statement of the maximum current fiscal year obligation approved by Research and Development Board for the operational category or other controlling element under which the supported project is classified.

(7) The total amount previously obligated in the current fiscal year under the operational category or other controlling element under which the supported project is classified, plus the amount which may be in the process of obligation (i. e., forwarded but not yet approved for negotiation by the Secretary or Head of the Procuring Activity), but exclusive of the instant request.

(8) If Army Research and Development funds are not involved, a statement will be included as to what funds are available and will be obligated for the procurement.

(9) If additional extensions are anticipated, a statement will be furnished as to the amount of the estimated additional expenditure. If extensions are not anticipated, it will be so stated.

§ 592.211-4 Records and reports. Reports required by § 402.211-4 of this title shall be made in the form and manner prescribed by Subpart H of Part 590 of this chapter.

§ 592.212 Classified purchases. (See § 592.201.)

§ 592.212-2 Application. (a) As a matter of general procurement policy, Contracting Officers shall negotiate, rather than procure by formal advertising, when the proposed contract or purchase order for the supplies or services being procured are classified Confidential or higher. The authority of section 2 (c) (12) of the Armed Services Procurement Act of 1947 will be used, however, only after the use of other negotiation authorities has been considered and found not applicable, and, where either the contract or purchase order for the supplies or services being procured are classified Confidential or higher.

(b) In addition to the requirements of § 598.579 of this chapter, DD Form 254 (Security Requirements Check List) will be used in precontract negotiations when it is necessary for proposed contractors and subcontractors to have access to classified matter.

§ 592.213 Technical equipment requiring standardization and interchangeability of parts. (See § 592.201.)

§ 592.213-2 Application. (a) The term "standardization," as used in connection with this authority, is that uniformity considered necessary to accomplish maximum interchangeability of parts, as distinguished from the general definition of standardization established in SR 715-50-1 (special regulations relating to specifications and standards).

(b) Negotiation under this authority will be limited to purchases of items of technical equipment which must be taken into the field with troops and will not be applied to items of commercial equipment used exclusively in installations in the United States.

(c) Determinations and Findings supporting procurement by negotiation under this authority will be for a stated period of time, which period, in general, will be in ratio to the life of the item being procured.

§ 592.213-3 Limitation. Procurements will not be negotiated under this authority unless the supplies to be purchased have been approved for standardization by the Secretary. Requests for standardization shall be submitted to the Advisory Committee On Procurement Without Advertising of Technical Equipment and Components, which committee will act in an advisory capacity to the Secretary. Additional procedures with respect to the standardization of technical equipment may be issued by the committee.

§ 592.214 Technical or specialized supplies requiring substantial initial investment or extended period of preparation for manufacture. (See § 592.201.)

§ 592.214-2 Application. The propriety of a proposed negotiation under this authority cannot be adequately judged unless the accompanying justification indicates the relative size of the previous dollar investment compared to the total of the proposed purchase, what the previous dollar investment or previous preparation consists of (with respect to such factors as facilities, tooling, equipment, training and the like), and what the already accomplished period of preparation is (in years and months). The investment and period of preparation necessary should exclude those costs and preparations such as research and development costs and production preparations, which have already been accomplished as a result of previous Department of Defense or commercial contracts provided those results can be made available to other suppliers. In giving weight to the term "substantial initial investment," justification of "substantial" in this respect must be more than the mere fact that a manufacturer accomplished the initial tooling in a particular instance.

§ 592.214-3 Limitation. In submitting a request for approval and signature of the Determination and Findings required by § 402.302 of this title, a justification for the use of this authority will be presented. The following are illustrative of facts to be considered and information to be included in such a justification:

(a) The advantages which will accrue to the Government by avoiding the duplication should be emphasized.

(b) The requirement "may require duplication of investment" should be invoked only when the preceding requirement of "substantial investment" has been substantiated.

(c) The requirement "may require duplication of preparation already made" should be invoked only when the

preceding requirement of "requiring an extended period of preparation for manufacture" has been substantiated.

(d) The requirement "will unduly delay procurement" should be substantiated by statements that the supplier being considered can deliver by a certain date, other suppliers cannot deliver before a specified later date, delivery by a designated earlier date is necessary for military or logistical reasons, and therefore, the proposed supplier is the only supplier who can meet the required delivery terms of the proposed contract.

(e) The name of the supplier or suppliers with whom negotiations are to be conducted will be furnished.

§ 592.215 Negotiation after advertising. (See § 592.201.)

§ 592.215-2 Limitation. (a) The authority of section 2 (c) (15) of the Armed Services Procurement Act of 1947 can be invoked for all of or only a portion of a specific procurement. When invoked, two determinations by the Secretary are required. The first determination, to be submitted before negotiation, should state the range of bid prices received and the prices or range of prices which are considered unreasonable or have not been independently arrived at in open competition. The second determination, to be submitted after negotiation, should (1) prove that, prior to negotiation, the Contracting Officer gave a notice of intention to negotiate and a reasonable opportunity to negotiate to each responsible bidder whose bid was rejected, (2) specifically state the lowest negotiated price and identify the supplier offering it, and (3) determine that the negotiated price is lower than the lowest rejected bid price of a responsible bidder, and is the lowest negotiated price offered by any responsible supplier. If, however, all the facts are available at the time a request for approval and signature of the Secretary is submitted, both of the required determinations may be included in the preparation of a single Determination and Findings.

(b) In the event a Contracting Officer believes that the bid prices have not been independently arrived at in open competition, he shall in all cases submit the information required by § 591.406-4 of this chapter to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch).

§ 592.216 Purchases in the interest of national defense or industrial mobilization. (See § 592.201.)

§ 592.216-2 Application. Contracts for Phase II and III Industrial Mobilization Planning Studies shall be negotiated under this authority rather than section 2 (c) (10) of the Armed Services Procurement Act of 1947.

§ 592.216-4 Records and reports. Reports required by § 402.216-4 of this title shall be made in the form and manner prescribed by Subpart H of Part 590 of this chapter.

§ 592.217 Otherwise authorized by law. (See § 592.201.)

§ 592.217-2 Application. Section 2 (c) (17) of the Armed Services Procure-

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ment Act of 1947 preserves the authority to negotiate contracts specifically conferred by statute other than the Armed Services Procurement Act of 1947 and not repealed therein. Contracts will not be negotiated under this authority without the prior approval of the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch). Requests for such approvals, with respect to either individual or classes of contracts, will contain a statement of pertinent facts and reasons therefor, including the citation of the applicable statute, and will be submitted through the Head of the Procuring Activity concerned to the Assistant Chief of Staff, G-4 (Attn.: Chief, Current Procurement Branch).

§ 592.218 Construction work. (See § 592.201.) Since the authority contained in § 402.218 of this title is not completely self-sufficient and can be used only in conjunction with other statutory exceptions to formal advertising, § 402.218 of this title and this section will not be cited as authority for negotiating the procure-

ment of construction work. Only sections 2 (c) (1), (2), (3), (6), (10), (11), (12), or (15) of the Armed Services Procurement Act of 1947 will be used as authority to negotiate construction work.

§ 592.250 Summary Table. (a) As a convenience to Contracting Officers, the following summary table sets forth (1) the circumstances under which contracts may be entered into as a result of negotiation and without formal advertising, (2) the citation of the applicable section of Armed Services Procurement Regulations and this Procedure, (3) the citation of the applicable section of the Armed Services Procurement Act of 1947, and (4) certain other data.

(b) Since the statutory exceptions to formal advertising are not all mutually exclusive, the table lists the exceptions in order of preference to assist Contracting Officers in selecting the preferred authority when a procurement can be negotiated properly under more than one authority.

Order of preference	Circumstances	Procurement Act 1947 sec.	Sections of Title 32, CFR	Remarks
1	National emergency.....	2 (c) (1)	402.201 and 592.201	Use only when directed by Secretary.
2	Purchases not in excess \$1,000.....	2 (c) (3)	402.203 and 592.203	Purchases not to be broken down in order to use this authority.
3	National Defense or Industrial Mobilization.....	2 (e) (16)	402.216 and 592.216	Determination and Findings by Secretary necessary. Copy to GAO.
4	Experimental, developmental, or research work.....	2 (c) (11)	402.211 and 592.211	Determination and Findings by Secretary necessary if over \$25,000. Copy to GAO.
5	Standardization and interchangeability.....	2 (c) (13)	402.213 and 592.213	Determination and Findings by Secretary necessary. Copy to GAO.
6	Substantial investment or extended preparation.....	2 (c) (14)	402.214 and 592.214	Determination and Findings by Secretary necessary. Copy to GAO.
7	Services of educational institutions.....	2 (c) (5)	402.205 and 592.205	Determination and Findings by Secretary necessary except under certain conditions. Contract must be approved by Secretary. Additional statutory authority required.
8	Personal or professional services.....	2 (c) (4)	402.204 and 592.204	
9	Medicines or medical supplies.....	2 (c) (7)	402.207 and 592.207	Special publicity required.
10	Authorized resale.....	2 (e) (8)	402.208 and 592.208	Special publicity required.
11	Perishable subsistence.....	2 (e) (9)	402.209 and 592.209	Questions as to perishable or nonperishable determined by TQMG.
12	Competition impracticable.....	2 (c) (10)	402.210 and 592.210	Statement of justification by Contracting Officer. Copy to GAO.
13	Purchases outside United States.....	2 (c) (6)	402.206 and 592.206	Applicability dependent upon geographical area.
14	Public exigency.....	2 (c) (2)	402.202 and 592.202	Statement of justification by Contracting Officer necessary. Copy to GAO.
15	Negotiation after advertising.....	2 (c) (15)	402.215 and 592.215	Determination and Findings by Secretary necessary. Copy to GAO.
16	Otherwise authorized by law.....	2 (c) (17)	402.217 and 592.217	Use only after approval of Ass't Chief of Staff, G-4. Statement of Contracting Officer required.
17	Classified purchases.....	2 (c) (12)	402.212 and 592.212	Determination and Findings by Secretary necessary. Only confidential or higher. Copy to GAO.

SUBPART C—DETERMINATIONS AND FINDINGS

§ 592.301 Nature of Determinations and Findings—(a) Individual Determinations and Findings. Each proposed form of an individual Determination and Findings will be prepared in accordance with § 592.305.

(b) *Class Determinations and Findings.* Determinations and Findings, referred to throughout Part 402 of this title and this part, may be made with respect to classes of purchases or contracts only by the Secretary. In each such case the proposed form of a Determination and Findings will provide that such class of purchases or contracts may be negotiated during a specified period only. Each proposed form of a class Determination and Findings will be prepared in accordance with § 592.305. It is the policy of the Department to make determinations with respect to the negotiation

of classes of purchases or contracts only under special justifiable circumstances.

§ 592.302 Determinations and Findings by the Secretary. In addition to the Determinations and Findings required by § 402.302 of this title, the following determinations, and written findings in support thereof, may be made only by the Secretary:

(a) Determination with respect to negotiated contracts for the services of educational institutions when the amount involved exceeds \$25,000 and is for other than tuition contracts for military students (§ 592.205-2 (c)).

(b) Determination with respect to negotiated contracts for supplies or services for which it is impractical to secure competition by formal advertising when for studies or surveys covering Industrial Mobilization Planning Phase I Studies exceeding \$12,000 (§ 592.210-2 (e)).

§ 592.303 Determinations and Findings by the Head of a Procuring Activity signing as "a Chief Officer Responsible for Procurement." In addition to the determinations, and written findings in support thereof, authorized to be made by the Head of a Procuring Activity by § 402.303 of this title, the Head of a Procuring Activity signing as "a chief officer responsible for procurement" may make the determination required by § 592.407 (b) with respect to the use of a Time and Materials Contract.

§ 592.304 Determinations and Findings by a Contracting Officer. (a) The determinations required by §§ 402.404 through 402.406 of this title with respect to the use of a cost or a cost-plus-a-fixed-fee contract or an incentive type contract may not be made by a Contracting Officer. Such determinations will be made by the Head of a Procuring Activity as provided in § 402.303 (b) of this title.

(b) Contracting Officers may make the determination required by § 592.407 (b) with respect to the use of a Time and Materials Contract, if the authority to do so has been delegated by the Head of the Procuring Activity.

§ 592.305 Forms of Determination and Findings—(a) Authority to negotiate an individual contract—(1) Form. Individual Determinations and Findings with respect to the negotiation of contracts under the authority of §§ 402.211 through 402.217 of this title and as otherwise required by this Subchapter G shall be prepared for the signature of the Under Secretary of the Army (or where authorized by § 402.211 of this title for the signature of the Head of the Procuring Activity signing as "a chief officer responsible for procurement") substantially in the form set forth below and in the manner prescribed in § 592.306:

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS

Authority To Negotiate an Individual Contract

1. I hereby find that:
 - a. The (insert name of Procuring Activity) proposes to procure (describe briefly the scope of the work, or the nature of the supplies or services called for).
 - b. The estimated cost of the proposed procurement is \$_____, chargeable to fiscal year _____ funds.
 - c. The procurement of the above described supplies (services) by formal advertising is not feasible because (summarize such pertinent facts as are available and relevant to support the determination to be made in par. 2).
2. Upon the basis of the findings set forth above, I hereby determine that (insert statement of required determination under applicable section of Part 402 of this title and this part).
3. The above supplies (or services) may, therefore, be procured by negotiation pursuant to section 2 (c) (insert applicable subparagraph) of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Congress), and paragraph (insert applicable ASPR authority) of the Armed Services Procurement Regulations.

(Typed signature)
Under Secretary of the Army.

In connection with Determinations and Findings to be signed by the Under Secretary of the Army, the following certi-

ficate shall be included on the face of the above form, and such certificate shall be signed by the Head of the Procuring Activity, his Deputy or his Chief of Staff.

I certify that the statements made herein (and in the attachments hereto*) are correct to the best of my knowledge and belief. Signature is recommended.

(2) *Scope of Determinations and Findings.* In general, it is desirable to confine each Determination and Findings to a single page, and in that connection to set forth the necessary findings as briefly as possible and to confine them to only those facts which are necessary and relevant to support the one or more determinations that are being made. It is neither necessary nor desirable to justify the choice of a particular contractor. With respect to the determination or determinations, it is important to set forth only that one (or those) which is responsive to the various findings, and necessarily to confine it to the requirements and the particular language set forth under the applicable exception in the Act; further in this connection, it is important to guard against a determination in the alternative (except possibly for the one relating to "experimental, development, or research work") and to use cumulative language only when more than one determination is in fact supported by the findings (for example, under section 2 (c) (14), "substantial initial investment" and "extended period of preparation for manufacture"). However, if certain requirements are optional, it is desired that the Determination and Findings list only those requirements of the exception which are essential and can be strongly supported. There is no objection, however, if the facts warrant, to substantiating all the requirements. All other pertinent information should be included in the request for approval and signature of the Determination and Findings by the Secretary.

(b) *Authority to negotiate a class of purchases or contracts.* Determinations and Findings with respect to the negotiation of classes of purchases or contracts, as referred to in § 402.301 of this title and § 592.301, shall be prepared as set forth in paragraph (a) of this section, with appropriate modifications to make it applicable to a class of purchases or contracts. All such class Determinations and Findings shall be prepared for the signature of the Under Secretary of the Army.

(c) *Advance payments.* Determinations and Findings with respect to advance payments as set forth in Subpart E of Part 402 of this title, shall be prepared for the signature of the Under Secretary of the Army substantially in the form set forth below and in the manner prescribed in § 592.306.

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS

Authority for Advance Payments

1. I hereby find that:

a. The (insert the name of Procuring Activity) proposes to procure (describe briefly

the scope of the work, or the nature of the supplies or services called for).

b. The estimated cost of the proposed procurement is \$ _____, chargeable to fiscal year _____ funds.

c. The name of the contractor (or proposed contractor) is _____.

d. The contractor (or proposed contractor) cannot finance performance of the proposed contract with its own resources and is unable to secure adequate financing through private sources, and, therefore, it is deemed necessary and appropriate in order to procure the required supplies to authorize advance payments in an amount not exceeding \$ _____.

e. No other contractor is available to furnish the desired supplies (or services), upon terms satisfactory to the Department of the Army, without provision for advance payments.

f. The unliquidated balance of advance payments shall bear interest at the rate of _____% and shall be subject to such other terms and conditions as may be imposed by the (Head of Procuring Activity) in accordance with policies now existing or hereafter prescribed.

2. Upon the basis of the findings set forth above, I hereby determine that pursuant to section 5 (a) of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.) and paragraph 3-502 of the Armed Services Procurement Regulation, the provision for advance payments is in the public interest or in the interest of national defense, and is necessary and appropriate in order to procure the required supplies (or services) under the contract, and such advance payments not exceeding \$ _____ are hereby authorized.

(Typed signature)
Under Secretary of the Army.

The following certificate shall be included on the face of the above form, and such certificate shall be signed by the Head of the Procuring Activity, his Deputy or his Chief of Staff:

I certify that the statements made herein (and in the attachments hereto*) are correct to the best of my knowledge and belief. Signature is recommended.

(d) *Method of contracting.* Determinations and Findings with respect to the use of a cost, cost-plus-a-fixed-fee, or incentive type contract, as set forth in Subparts D of Part 402 of this title and of this part, will be prepared for the signature of the Head of the Procuring Activity, signing as "a chief officer responsible for procurement" substantially in the following form. (Heads of Procuring Activities and Contracting Officers may use the form set forth below as a guide in making the determination required by § 592.407. If such use is made of the form, change the citation "section 4 (b)" to "section 4 (a)" in paragraph 2):

DEPARTMENT OF THE ARMY
DETERMINATION AND FINDINGS

Method of Contracting

1. I hereby find that:

a. The (insert name of Procuring Activity) proposes to procure (describe briefly the scope of the works, or the nature of the supplies or services called for).

b. The estimated cost of the proposed procurement is \$ _____ (including, when applicable, a statement as to the percentage of proposed fixed fee), chargeable to fiscal year _____ funds.

c. The use of a (insert type of a contract to be used) contract is the most practicable

and likely to be the least costly method of contracting because (summarize such pertinent facts as are available and relevant to support the determination to be made in par. 2).

2. Upon the basis of the findings set forth above, I hereby determine that pursuant to section 4 (b) of the Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.), and paragraph (insert applicable ASPR authority) of the Armed Services Procurement Regulation, that the use of a (insert type of contract) contract (a) is likely to be less costly than other methods of contracting, or (b) that it is impracticable to secure supplies (or services) of the kind or quality required without the use of a (insert type of contract) contract.

Signature of the Head of the Procuring Activity signing as "a chief officer responsible for procurement."

§ 592.306 *Procedure with respect to Determinations and Findings.* (a) Requests for approval of Determinations and Findings, referred to throughout Part 402 of this title and this part and requiring the signature of the Secretary, will contain a complete statement of facts and recommendations and be accompanied by the Determination and Findings prepared for the appropriate signature, as well as such supporting data as are necessary to demonstrate the applicability of the cited section of the Armed Services Procurement Act of 1947. In addition, each request will cite the appropriate funds to be used for the procurement.

(b) The Determination and Findings, request for approval and signature, and all supporting documents will be submitted in quadruplicate (if Military Interdepartmental Purchase Requests or similar documents relating to the transfer of funds are being submitted, duplicate copies of such documents will be sufficient) to the Army Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch). In the case of advance payments, requests for approval and signature of Determinations and Findings will be submitted through the Chief of Finance.

(c) Requests for approval and signature by the Secretary in connection with Determinations and Findings authorizing procurement by negotiation may be accompanied by a request for approval of award in those cases requiring such award approval pursuant to § 590.604.

§ 592.307 *Distribution of copies of Determinations and Findings—(a) Individual Determinations.* One authenticated copy of each Determination and Findings required by Subpart C of Part 402 of this title will be sent to the General Accounting Office with the original signed number of each contract negotiated and executed thereunder. The original signed copy of each Determination and Findings will be filed with the signed copy of the contract retained in the official files of the purchasing office or Procuring Activity concerned. Additional copies may be distributed in accordance with instructions issued by the Head of the Procuring Activity concerned.

(b) *Class Determinations.* One authenticated copy of each Determination and Findings made with respect to

*To be included when applicable.

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classes of purchases or contracts will be sent to the General Accounting Office with the original signed number of the first contract negotiated thereunder. Each subsequent contract negotiated thereunder shall refer on its face to the particular class Determination and Findings on file with the General Accounting Office, citing the number of the original contract. The original signed copy of each class Determination and Findings will be filed with the signed copy of the first contract negotiated thereunder retained in the files of the purchasing office or Procurement Activity concerned. Additional copies may be distributed in accordance with instructions issued by the Head of the Procuring Activity concerned.

(c) *National emergency.* The requirements of this section are waived with respect to contracts negotiated under § 402.201 of this title and § 592.201.

§ 592.308 Retention of copies of Determinations and Findings and of other records. (a) Executed originals of all Determinations and Findings, copies of all supporting documents, and complete records with respect to all negotiated contracts shall be preserved in the cognizant purchasing office or Procuring Activity concerned for a period of six years following payment on each respective contract, unless retired earlier under special regulation.

(b) Each procurement transaction file will be complete and copies of all documents, certified if necessary, will be included therein. Procurement transaction files will be maintained in such a manner as to present a complete résumé of the transaction for historical record or such other purpose as may be required. As a minimum in negotiated procurements, a memorandum for record, signed by the Contracting Officer and briefly setting forth the facts, conclusions, and actions regarding the transaction, will be included as part of the file.

SUBPART D—TYPES OF CONTRACTS

§ 592.401 Authorized types of contracts—(a) Basic Policy. In accordance with the basic policy set forth in § 402.401 of this title the fixed-price type of contract shall generally be used for negotiated contracts; other methods of contracting may be used only when the requirements of Subpart D of Part 402 of this title and of this part have been satisfied.

(b) *Pricing in connection with type of contract selected.* (1) Efficient procurement includes a discriminating use of the various types of authorized contracts. The type of contract selected has an important bearing upon the price to be paid by the Government. When competitive conditions or available cost data are sufficient to indicate reasonableness of the price, the fixed-price type of contract under which the price is not subject to subsequent adjustment affords the most effective means of reducing total cost to the Government. It is under this type of contract that incentives to production efficiency are greatest. It must be recognized, however, that prices under such contracts may include charges for contingencies.

Such provisions may be eliminated, at least in part, by the use of price redetermination clauses. Many of the normal risks involved in contract performance are shifted to the Government under the cost-reimbursement type of contract and the fixed-price type of contract under which the price is subject to possible upward adjustment. The relative risk borne by the contractor, the degree of incentive to production efficiency and the administrative cost involved under each type of contract should be given careful consideration in selecting the method of contracting.

(2) It is the policy of the Army to obtain the maximum use of funds, and to secure the largest possible quantities of materials of requisite quality which can be purchased with those funds. To that end, efforts will be directed toward close initial pricing and close pricing on redetermination, rather than to rely on recapture of excessive profit by statutory renegotiation.

(3) It is the policy of the Army to secure "close prices," which will be fair both to the Government and the contractor and which will provide an incentive for efficient performance by establishing an adequate margin of profit and by eliminating allowances for contingencies to the greatest extent possible. The objective of this policy is to keep management alert in an effort to avoid increased costs which would reduce the established profit, and to reduce costs, if possible, in order to increase the opportunity for additional profit.

(4) Profit or fee allowances will be determined separately under each contract, and "across-the-board" agreements with contractors as to rates of profit or fee will not be made. The determination of a fair and reasonable profit or fee is a matter of sound business judgment. There are no conclusive rules or formulas which would be suitable for uniform application; however, in arriving at a fair and reasonable profit or fee, the following factors should be considered:

- (i) Type of contract.
- (ii) Performance risks.
- (iii) Record of efficiency in production.
- (iv) Character and extent of subcontracting.
- (v) Reliability of contractor's cost estimates.
- (vi) Equipment, facilities, or financial assistance furnished by the Government.
- (vii) Invested capital.
- (viii) Possible present or future benefit to the contractor.
- (ix) Value added by the manufacturing processes.
- (x) Contingency factors.

§ 592.402 Fixed-price contract. (a) The fixed-price contract provides for a firm price or prices for the supplies or services which are being procured. This type of contract may include a provision for price escalation agreed to at the time of entering into a contract. Authorized price escalation clauses are set forth in § 596.151. (See also § 402.401 of this title and § 592.401.)

(b) In a fixed-price contract for architectural or engineering services relating to any public work or utility project, the maximum price for such services shall not exceed 6 percent of the estimated cost of such project (exclusive of the fixed fee for the project).

(c) Part 414 of this title, Contract Cost Principles, will not be used in negotiating prices under fixed-price contracts other than (1) by auditors for the purpose of preparing advisory reports, and (2) by Contracting Officers to the extent they deem it advisable, as a working guide only.

§ 592.403 Fixed-price contract with provision for redetermination of price. (a) Pursuant to the policies set forth in § 402.403 of this title, an appropriate price redetermination clause, as authorized in § 596.152, should be used in fixed-price contracts in those instances when:

- (1) There are no data to indicate reasonableness of price, such as lack of effective competition or the absence of an independent Government estimate; or
- (2) The estimate of the low offeror, or the only offeror, exceeds the independent Government estimate by an unreasonable amount; or
- (3) It is necessary or desirable to eliminate charges for contingencies from the contract amount; or

(4) It is necessary or desirable to incorporate incentives to increase production efficiency and to reduce costs; or

(5) Other circumstances require protection of the interests of the Government by use of price redetermination clauses.

(b) In accordance with the above, the forms of price redetermination clauses set forth below may be used in negotiated fixed price contracts without approval of higher authority, except for those approvals as may be required by the Head of a Procuring Activity. Price redetermination clauses not included in subparagraphs (1) through (3) in this paragraph will not be used without the prior approval of the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army.

(1) Form III in any negotiated contract up to amounts not in excess of \$100,000.

(2) Form II-B in any negotiated contract where the delivery schedule calls for deliveries over a prolonged period, regardless of contract amount.

(3) Form IV in any negotiated contract, regardless of contract amount.

(c) Upward revision to be allowed in Forms II-B and IV, price redetermination clauses, will be limited to 10 percent in all possible cases and in any event limited to 25 percent. Only the standard price redetermination clauses, without deviation except as authorized herein, will be used under this excepted authority. In view of the protection afforded to the contractor by the use of a price redetermination clause in reduction of the risks to him, careful consideration will be given in determining the rate of profit to be allowed, with due weight being given to the percentage of the contract consisting of material, subcontracting, standard commercial items

("off-the-shelf" items), and purchased parts. It will not be assumed that a contractor who agrees to inclusion of a Form III price redetermination clause in a proposed contract is assuming appreciable risk, unless it can be determined that the price offered by him does not include contingency provisions. Form IV, price redetermination clause, will be used in lieu of the Form II-B clause in production contracts in all instances, regardless of the contract amount, when the delivery schedule is so short as to preclude completion of price redetermination well in advance of completion of the contract or deliveries thereunder.

(d) Part 414 of this title, Contract Cost Principles, will not be used in negotiating prices under fixed-price contracts containing price redetermination clauses other than (1) by auditors for the purpose of preparing advisory reports, and (2) by Contracting Officers to the extent they deem it advisable, as a working guide only.

§ 592.405 Cost contract. (a) Pursuant to the requirements of § 402.405 of this title, the cost (or cost-sharing) type of contract may be used in those cases where fixed-price (with or without provision for price redetermination) contracts are not suitable, where the contractor's cost recording system facilitates audit, and where close scrutiny by Government representatives during performance of the contract will give reasonable assurance that the contractor is not employing wasteful or extravagant methods.

(b) Standards for the determination and allowance of costs in connection with the performance of cost type contracts are set forth in Part 414 of this title.

§ 592.406 Cost-plus-a-fixed-fee contract. (a) Pursuant to the requirements of § 402.406 of this title, the cost-plus-a-fixed-fee type of contract may be used in those cases where fixed-price (with or without provisions for price redetermination) contracts are not suitable, where the contractor's cost recording system facilitates audit, and where close scrutiny by Government representatives during performance of the contract will give reasonable assurance that the contractor is not employing wasteful or extravagant methods.

(b) Under a cost-plus-a-fixed-fee type of contract, the contractor is reimbursed for substantially all its costs, and the fixed-fee represents essentially profit without risk. Such fee should be determined not by the amount of the estimated cost, but by the extent and nature of the work supervised or the services to be performed by the contractor. Thus in fixing the fee consideration should be given, among other factors such as those listed in § 592.401 (b) (4), to whether the work or production involved is complicated or simple, the turn-over slow or rapid, how much or little of the work will be subcontracted, and how extensive or difficult the duties of the prime contractor will be in supervising the subcontracted work.

(c) Standards for the determination and allowance of costs in connection with the performance of cost-plus-a-

fixed-fee type contracts are set forth in Part 414 of this title.

§ 592.407 Time and materials contract—(a) General. It is the policy of the Army that time and materials contracts will be awarded only on the basis of sound business practice, and that the expenditure of funds thereunder shall be supervised and controlled to assure maximum return and benefit to the Government. In such type of contracts, charges for material will be reimbursed at contractors' cost without allowance for overhead or profit; however, a material handling charge may be allowed if in accordance with the contractor's established accounting system, and if it is not duplicated in the overhead rate allowed the contractor.

(b) *Limitation on use.* The time and materials type of contract will be used only after a determination by the Head of the Procuring Activity (or by the Contracting Officer, if so delegated in Procuring Activity instructions), that—

(1) Such method of contracting is likely to be less costly than other methods; or

(2) It is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

(c) *Justification of use.* The official contract file will contain a certificate, accomplished by the Contracting Officer, justifying the use of a time and materials contract, which certificate will include information such as the following:

(1) Hourly rates, including overhead and profit, compared with—

(i) Previous Governmental contracts of this type.

(ii) Rates normally charged on commercial contracts of this type.

(iii) Existing contracts with other agencies.

(2) Complete justification of profit percentages in excess of ten percent of direct labor and labor overhead.

(d) *Reimbursement for material.* All time and material type contracts will provide that material purchased, manufactured, or otherwise procured thereunder shall be reimbursed by the Government to the contractor at cost. For the purpose of this section, the term "at cost" will be construed to mean:

(1) *Standard commercial parts.* When the contractor purchases the material furnished, the net cost (cost clear of anything extraneous, i. e., cash discounts, trade discounts, rebates, commissions, and any other allowances and credits available to the contractor) to the contractor, regardless of date purchased, plus properly identified and supported freight or transportation charges, if any, paid by the contractor. Other costs, such as material handling expense, which must be included as a part of overhead in the unit labor rate, are not allowable under this section.

(2) *Fabricated special parts.* When the contractor manufactures the material furnished as a nonstandard item, the net cost, including direct labor expense direct material expense (clear of all deductions, such as cash discounts, trade discounts, rebates, commissions, and any other allowances and credits available to the contractor) to the con-

tractor, plus allocable freight or transportation charges, other direct charges, if any, and related overhead costs but no allowance for profit.

(3) *Fabricated standard parts.* (i) When the contractor manufactures the parts furnished as a standard item, the net cost (after deducting all discounts, rebates, commissions, and all charges for the contractor's profit) will constitute the charge allowable at date of delivery to the Government; however, (ii) when all or some of the parts furnished appears on a current Federal Supply Schedule the contract will make reference to the applicable schedule(s) and the cost will not exceed the schedule price but will be the lesser price allowed under (i) above.

§ 592.408 Letter contract.

§ 592.408-1 Approval requirement. Letter contracts, or any other type of preliminary contract, will not be used without prior approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), except that, subject to limitations imposed by § 592.408-4, heads and acting heads of technical services are authorized to issue letter contracts as follows:

(a) *Letter contracts for other than research and development.* Heads and acting heads of technical services are authorized to issue letter contracts for other than research and development in amounts not to exceed \$2,500,000 when the total estimated definitive contract amount is \$5,000,000. When the total estimated amount of the definitive contract is less than \$5,000,000 the maximum amount of any letter contract which the heads of technical services may authorize is 50 percent of such total estimated definitive contract amount. When the total estimated definitive contract amount of any procurement exceeds \$5,000,000, or it is desired to award a letter contract for an amount in excess of 50 percent of the total estimated amount of the definitive contract, irrespective of such total, prior approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), is required before issuance of the letter contract. (For instructions as to information to be furnished in requesting authority to issue letter contracts as herein specified, see § 592.408-5.)

(b) *Letter contracts for research and development.* Heads and acting heads of technical services are authorized to issue letter contracts for research and development in amounts not to exceed \$50,000 when the total estimated definitive contract amount is \$100,000. When the total estimated amount of the definitive contract is less than \$100,000, the maximum amount of any letter contract which the heads of technical services may authorize is 50 percent of such total estimated definitive contract amount. When the total estimated definitive contract amount of any procurement exceeds \$100,000, or it is desired to award a letter contract for an amount in excess of 50 percent of the total estimated amount of the definitive contract, irrespective of such total, prior approval of

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the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), is required before issuance of the letter contract. (For instructions as to information to be furnished in requesting authority to issue letter contracts as herein specified, see § 592.408-5.)

§ 592.408-2 Redelegation of authority. The authority delegated in § 592.408-1 (a) and (b) may be redelegated by heads of technical services to the extent deemed necessary to personally selected members of their organizations. Such selected members are not authorized to redelegate this authority.

§ 592.408-3 Supersession by definitive contract. Letter contracts shall be superseded as soon as possible by final definitive contracts. Advice as to letter contracts approved by the technical services under the authority of §§ 592.408 to 592.408-6, which have not been superseded by a final definitive contract within 120 days from the date of issue (not date of execution) of such letter contract will be submitted to the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) with full justification as to the circumstances precluding the execution of a definitive contract within such period.

§ 592.408-4 Conditions for use. Subject to §§ 592.408-1 and 592.408-2, the authority to issue letter contracts is contingent upon compliance with § 402.408 of this title and the conditions set forth below:

(a) That the definitive contracts will contain all required standard clauses, in addition to such standard optional clauses as are necessary to protect fully the interest of the Government, and that this provision will be made a condition of each letter contract.

(b) That all fixed-price contracts, when there is no information upon which to base reasonableness of price, will contain applicable standard price redetermination clauses with upward limitations thereunder held to a minimum, but in no event to exceed 25 percent, and that this provision shall be made a condition of each applicable letter contract.

(1) Irrespective of total estimated definitive contract amount, a definitive contract or letter contract providing for a price redetermination clause with upward revision exceeding 25 percent must have prior approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

(2) Independent Government estimate, prepared prior to receiving estimate from the proposed contractor, may be used to determine reasonableness of price.

(c) That the fixed-fee in a cost-plus-a-fixed-fee type of contract will not exceed the limitations set forth in § 402.406-1 of this title, with further consideration given to the following:

(1) The absence of risk to the contractor.

(2) The estimated quantity of the following as compared with the total estimated definitive contract price: (i) Material, (ii) subcontracting, (iii) pur-

chased parts, and (iv) "Off-the-Shelf" items.

(3) The size of the proposed contract.

(d) That the profit to be paid shall be consistent with the protection afforded to the contractor in the minimizing or removal of risk to him, with due consideration given to the estimated quantity of the following as compared to the total estimated contract price: (1) Material, (2) subcontracting, (3) purchased parts, and (4) "Off-the-Shelf" items.

§ 592.408-5 Information to be furnished when requesting approval of letter contracts. Requests for authority to award letter contracts submitted to the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), must indicate that the use will be in accordance with the basic policies set forth in § 402.408 of this title, and will include the following:

(a) Statement as to the necessity and advantage to the Government of the use of the proposed letter contract.

(b) Name and address of proposed contractor.

(c) Location where contract is to be performed.

(d) Brief description of supplies and quantities to be furnished or services to be rendered.

(e) Duration of letter contract in number of days from date of execution.

(f) Amount of letter contract.

(g) Total estimated definitive contract amount, including estimated cost of: (1) facilities, (2) special tooling, equipment, etc., (3) activation or reactivation, (4) training of personnel, and (5) subcontracting.

(h) Estimated delivery schedule.

(i) Type of definitive contract proposed (fixed-price, cost-plus-a-fixed-fee, etc.).

(j) Statement as to whether the definitive contract will contain all required standard clauses in accordance with Armed Services Procurement Regulations (chapter IV of this title), this Procedure, and other Department of the Army directives.

(k) List of all standard optional clauses which will be made a part of the definitive contract, including: (1) Patent clauses, (2) Copyright clause, (3) Special Tooling clause, (4) Government Property clause, (5) Facility agreement, and (6) Price Redetermination clause (including form number and percentage of upward revision).

(l) Statement that the provisions of paragraphs (j) and (k) of this section will be made a condition of the subject letter contract.

(m) Statement that the minimization of risk, through inclusion of the price redetermination clause, will be given due consideration in determining the rate of profit to be allowed, with further attention given to the amount of each of the following as compared to the total estimated contract amount: (1) material, (2) subcontracting, (3) purchased parts, and (4) "Off-the-Shelf" items.

(n) Source of funds to be used in the proposed procurement, showing—

(1) Total allocated, and

(2) Total obligated to date, exclusive of the proposed letter contract.

(o) Statement that research and development funds will not be used when the work to be covered is not for research and development.

(p) Statement that the definitive contract will be executed with a minimum of delay.

(q) Statement that the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), will be notified through the Head of the respective Procuring Activity, without delay, as to the date of execution of the letter contract.

(r) Statement that request for approval of award, if required, will be forwarded in time to reach the Office of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), no later than fifteen (15) days prior to the expiration of the letter contract.

(s) Statement that the letter contract will be reported on "Individual Procurement Action Report," DD Form 350, in the amount of the letter contract; and that subsequent reports will be submitted, when and if changes are made in the amount of obligation of the letter contract, only in the amount of such change, whether plus or minus. Further, that when formal contract is executed, report will be made only in the amount of the definitive contract, less the cumulative obligation under the letter contract and any changes thereto. (See Subpart H of Part 590 of this chapter.)

§ 592.408-6 Approval for modification of letter contracts. Letter contracts approved for issuance by the Assistant Chief of Staff, G-4, will not be extended or amended without prior approval of Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch). Requests for approval of extensions or increases will be submitted in the following form:

(a) Name and address of contractor.

(b) Description of work to be performed, showing quantity of items originally approved.

(1) If quantities have been increased subsequent to original approval, show such quantities, authority, and date.

(2) If additional quantities are to be procured, show such quantities and new total.

(c) Date originally approved.

(d) Date letter contract was executed (accepted by contractor).

(e) Duration originally approved.

(1) If extensions in the duration have been made subsequent to original approval, show such extensions, authority, and dates.

(2) If additional days are required, show number required and new total.

(f) Amount of letter contract originally approved.

(1) If increases have been made subsequent to original approval, show each increase, authority, and dates.

(2) If additional increase is required, show amount and new total, and source of funds, including: (i) Total allocated, and (ii) total obligated to date, exclusive of the proposed increase.

(g) Estimated definitive contract total originally approved.

(1) If increases have been made subsequent to original approval, show each increase, authority, and date.

(2) If additional increase is required, show amount and new total.

(h) Complete justification for extension or increase requested, including reasons as to why definitive contract cannot be executed without such amendment.

NOTE. The requirements of this section shall not be construed to restrict Procuring Activities from approving definitive contracts, within the authority of § 590.604 of this chapter, for which letter contracts were approved by The Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch) prior to the delegation of such authority.

§ 592.409 Other types of contracts—
 (a) *Purchase order.* A Purchase Order is a fixed-price contract, in the form of a written acceptance signed by the Contracting Officer, for the purchase of supplies or services from an established price list or following a written or oral quotation of prices. Purchase Orders shall be used only for negotiated purchases and as prescribed in Part 596 of this chapter. DA AGO Form 383 is a type of Purchase Order authorized for use for purchases not in excess of \$1,000 (see Subpart G of Part 590 of this chapter).

(b) *Open-end contract.* An open-end contract is an agreement for supplies or services which contains no or varying limits of time and quantity and which usually involves recurring order and charges in varying degree.

§ 592.411 Contract forms and provisions. Authorized contract forms and provisions are set forth or referenced in Parts 406 and 596 of this title.

SUBPART E—ADVANCE PAYMENTS

§ 592.502 Authority to make advance payments. It is the policy of the Army to require contractors furnishing supplies and services to be able to perform contracts with their own funds or with private financing. In negotiated procurements, contractors may be assisted in financing needs by providing for expeditious reimbursement for proper expenditures under cost-reimbursement type contracts, and by use of progress payments and/or partial payments in connection with fixed-price contracts. The policy with respect to the use of partial or progress payments is set forth in § 596.150-1. Exceptions to this general policy may be permitted in negotiated procurements in those instances in which the contractor is particularly adapted to the supplying of items or services to be procured, but who is limited in working capital and is unable to obtain private commercial financing. In such cases, consideration may be given to the use of Government financing through advance payments as prescribed in Subparts E of Part 402 of this title and of this part.

(a) Authority to make advance payments is vested in the Secretary. Requests for such authority will, in each instance, be submitted to the Assistant Chief of Staff, G-4 (Attn.: Chief, Current Procurement Branch), through the

Head of the Procuring Activity concerned and the Chief of Finance. The request, including all supporting documents, submitted in original and 6 copies, will be supported by the following data:

(1) A statement from the Head of the Procuring Activity concerned that the national interest will be served in making the advance payment.

(2) A statement from the Head of the Procuring Activity concerned that contractors with other means of financing are not available upon terms satisfactory to the Procuring Activity without provision for advance payment.

(3) Information as to the security proposed to protect the Government against loss together with the definite recommendation of the Head of the Procuring Activity involved as to the adequacy thereof and negative covenants, if any, needed for further protection of the Government against loss.

(4) Information as to general character and responsibility as well as technical ability of the contractor to perform the contract.

(5) Dollar amount of the contract, the items to be supplied and a schedule of deliveries.

(6) Information as to whether the contract was awarded on a fixed-price or on a cost-reimbursement basis.

(7) Terms of the proposed advance and method of repayment or liquidation.

(8) Latest available balance sheet and profit and loss statement of contractor.

(9) Copy of the contractor's letter of request and any financial and budgetary data submitted in support of the necessity for the advance payment.

(10) Copy of the Contracting Officer's report on the advance payment request, if any.

(11) Date and identifying symbol of the approval of the award together with the appropriation available.

(12) Six copies of the Determination and Findings, required by § 402.302 (g) of this title in the form set forth in § 592.305 (c), and any other information pertinent to a proper decision in the case.

(b) Requests for approval of the authorization of an advance payment may be presented during the negotiation of a contract and prior to completion thereof. If the proposed contract is available, a copy thereof shall be attached to the request. If copy of the contract is not available at the time the request is forwarded, a copy shall be promptly submitted to the Chief of Finance for review and filing subsequent to execution.

§ 592.503 Limitations on authority to make advance payments. A request for authorization to make advance payments shall not be forwarded unless it comes within the provisions of § 402.503 of this title. It should be noted that paragraph (b) of § 402.503 of this title makes an exception which permits advance payments in connection with non-profit research and development contracts with educational institutions.

§ 592.504 Security provisions. (a) Advance payments shall be authorized

only on the furnishing of adequate security by the contractor. This security shall be that required under provisions of the contract involved. A guarantee by, or bond of, a parent corporation is desirable if the subsidiary corporation has limited financial responsibility, especially in the case of a newly-formed subsidiary corporation. Whether or not guarantees, subordination agreements, or other security devices shall be required in connection with advance payments is within the discretion of the Secretary. Advance payment bonds shall be required only in the most exceptional circumstances.

(b) When the contract clause prescribed by the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, provides for deposit of monies from the advance payment to be placed in a special bank account, the contractor shall obtain, execute, and turn over to the Contracting Officer for transmittal, through the Head of the Procuring Activity concerned and the Chief of Finance, to the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, 6 copies of an agreement executed by each bank in which a control bank account is established. Such an agreement shall be prepared substantially in the following form:

AGREEMENT

Agreement entered into this _____ day of _____, 1951, between the United States of America, represented by the Contracting Officer executing this Agreement, hereinafter called the Government,

(Contractor)
 a corporation organized and existing under the laws of the State of _____, herein-after called the Contractor, and _____, a banking corporation of the State of _____, located _____, herein-after called the bank.

RECITALS

(a) Under date of _____, 195_____, the Government and the Contractor entered into Contract No. _____, or a supplemental Agreement thereto, providing for the making of certain advance payments to the Contractor.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (act of August 23, 1935; 49 Stat. 684, as amended; 12 U. S. C., 264), separate from the Contractor's general or other funds; and, the bank being such a bank, the parties are agreeable to so depositing said amounts with the bank.

(c) It is further agreed that the Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the bank with respect to such account. In the event of the service of any writ of attachment, levy of execution or commencement of garnishment proceedings with respect to the Special Bank Account, the bank will promptly notify the office administering the advance payment thereof.

Now therefore, in consideration of the premises and for other good and valuable considerations, the parties hereto agree that the bank will be bound by the provisions of

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said contract or contracts relating to the deposit and withdrawal of funds in the Army Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account.

In witness whereof the parties hereto have caused this Agreement to be executed as of the day and year first above written.

THE UNITED STATES OF AMERICA.

By _____
 (Official Title)
 (Contractor)
 By _____
 (Bank Depository)
 By _____

(c) Upon the liquidation of advance payments, releases and agreements to release mortgages, guarantors in guaranty agreements, sureties on advance payment bonds, and other security devices which may be required in connection with advance payments, will be executed by the Under Secretary of the Army. Requests for such executions, accompanied by a certification of the Contracting Officer that the advance payment has been completely liquidated, will be forwarded to the Secretary (address request to Assistant Chief of Staff, G-4, Department of the Army (Attn. Chief, Current Procurement Branch)) through the Head of the Procuring Activity concerned and the Chief of Finance.

§ 592.505 Interest on advance payments. Except when specifically authorized by the Secretary to be made without interest, whenever an advance payment is made to a contractor by the Army, a charge will be made for use of Government money so furnished. The charge will be in the nature of an interest charge, computed on the rate set by the Secretary. In the case of a fixed-price contract, the amount of the charge will be deducted from payments under the contract. In the case of a cost-plus-fixed-fee contract, the charge will be deducted from the amount of the fee otherwise payable to the contractor. In case such fee is not sufficient to take care of such interest, chargeable deduction will be made from any other monies due the contractor. Such interest will not be an item of reimbursable cost under the contract.

§ 592.550 Contract clauses. Instructions pertaining to the use of contract clauses providing for advance payments are set forth in § 592.150-2.

§ 592.551 Reports. In connection with advance payments, the offices of the Heads of Procuring Activities concerned will make the following described reports:

(a) *Quarterly reports.* Reports on WD AGO Form 14-135 will be submitted to the Chief of Finance not later than the 15th day of the month following the close of the quarterly reporting period. A special statement together with a statement as to the steps being taken to protect the advance payments shall be included in the report as to any contract with respect to which the completion of the contract and liquidation of the advance payments appear to be doubtful.

This report shall not merely cover the period from the last report but shall also include data previously furnished. The report will not include contracts upon which complete liquidation of the advance payments has been made and previously reported. When it is intended to terminate a contract without using the advance, or the contract is completed without use of the advance, an appropriate remark to that effect shall be included when listing the advance in order to clear the records of the Chief of Finance; it will then be dropped from the next quarterly report.

(b) *Interim reports.* If at any time during the intervening periods between quarterly reports it appears doubtful that a contractor to whom advance payments have been made will complete the contract, a report shall be submitted to the Chief of Finance immediately. This report shall include a statement of the facts in the case and the action being taken to protect the Government's interest.

PART 593—COORDINATED PROCUREMENT

Sec.
 593.000 Scope of part.
 593.001 Coordinated procurement of items in short supply.

SUBPART A—SINGLE DEPARTMENT PROCUREMENT
 593.150 Pertinent regulations and procedures.

SUBPART B—ARMED SERVICES PETROLEUM PURCHASING AGENCY

SUBPART C—ARMED SERVICES MEDICAL PROCUREMENT AGENCY

AUTHORITY: §§ 593.000 to 593.150 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 593.000 Scope of part. Supplementary to, but consistent with, Part 403 of this title, this part sets forth instructions relating to the coordinated procurement of supplies and services.

§ 593.001 Coordinated procurement of items in short supply. Reports of shortages in supplies or services requiring coordination with other Departments will be forwarded to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), together with complete information thereon.

SUBPART A—SINGLE DEPARTMENT PROCUREMENT

§ 593.150 Pertinent regulations and procedures. With respect to purchase assignments and transfer of responsibilities for specific items occasioned by such assignments, technical services to which purchase or coordination responsibility has been assigned will prescribe appropriate procedures. These procedures will be formalized and published in Department of the Army directives. Pending publication of official directives, questions regarding procurement of items assigned for single department purchase will be referred to the technical service delegated purchase responsibility under Munitions Board assignments to the Army or coordination under assignments to the Navy or Air Force.

SUBPART B—ARMED SERVICES PETROLEUM PURCHASING AGENCY

NOTE: See Subpart B of Part 403 of this title; no further implementation in this Part.

SUBPART C—ARMED SERVICES MEDICAL PROCUREMENT AGENCY

NOTE: See Subpart B of Part 403 of this title; no further implementation in this Part.

PART 594—INTERDEPARTMENTAL PROCUREMENT

Sec.
 594.000 Scope of part.

SUBPART A—PROCUREMENT FROM OR UNDER CONTRACTS OF FEDERAL SUPPLY SERVICE

594.101 Statement of policy.
 594.102 Orders under contracts of Federal Supply Service.
 594.103 Procurement from Supply Centers of Federal Supply Service.
 594.104 Use of Stock Catalog, Federal Supply Service, Washington, D. C.

SUBPART B—PROCUREMENT OF PRINTING AND RELATED SUPPLIES

594.200 Scope of subpart.
 594.250 Requirements.
 594.251 Pertinent regulations and procedures.
 594.252 Sources of procurement for printing and reproduction.
 594.252-1 Departmental printing.
 594.252-2 Field printing.
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 594.253 Envelopes.
 594.254 Requirements.
 594.255 Pertinent regulations and procedures.
 594.256 Sources of procurement for envelopes.
 594.257 Jackets.
 594.258 Sources of procurement for paper.
 594.259 Related supplies.

SUBPART C—PROCUREMENT OF PRISON-MADE AND BLIND-MADE PRODUCTS

594.301 Prison-made products.
 594.302 Blind-made products.

SUBPART D—PROCUREMENT UNDER THE ECONOMY ACT FROM OR THROUGH ANOTHER FEDERAL AGENCY

AUTHORITY: §§ 594.000 to 594.302 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 594.000 Scope of part. Supplementary to, but consistent with Part 404 of this title, this part sets forth the policy with respect to (a) procurement of supplies and services from or through the Federal Supply Service, (b) procurement of printing and related supplies, and (c) procurement of prison-made and blind-made products.

SUBPART A—PROCUREMENT FROM OR UNDER CONTRACTS OF FEDERAL SUPPLY SERVICE

§ 594.101 Statement of policy. In the procurement of supplies or services covered by contracts made by the Federal Supply Service, General Services Administration, it is the policy of the Department of the Army to utilize, to the fullest extent consistent with economy and practicability, the "Federal Supply Schedule."

(a) Requirement. Purchases will be made under contracts of the Federal Supply Service, General Services Admin-

istration, which are mandatory by the terms of the schedules, or when so directed by the Head of the Procuring Activity concerned, except under the following circumstances:

(1) The item cannot be furnished under such contracts by the time such item is required.

(2) The item can be obtained more economically by another method of purchase.

(b) *Emergency purchase.* In any case when, pursuant to paragraph (a) (1) of this section, purchase of a mandatory item listed in the Federal Supply Schedule is not made from such Schedule, the voucher submitted to the Disbursing Officer for payment shall contain a finding that the purchase was justified as the item could not be furnished under the Federal Supply Schedule by the time such item was required. Such a finding shall be final and conclusive. The authority to make such a finding is vested in the Heads of the Procuring Activities. This authority will be used only when necessary, and will not be construed as authorization to disregard the requirements of the Federal Supply Schedule. In each instance, the finding will set forth the specific reasons why the time element made the purchase necessary.

(c) *Economy.* In any case when, pursuant to paragraph (a) (2) of this section, it is determined that a saving will be effected by the purchase of mandatory items listed in the Federal Supply Schedule from sources other than those listed in such Schedule, the voucher submitted to the General Accounting Office shall contain a finding stating the reason for purchase from other than the Federal Supply Schedule, and citing the amount of the savings effected. The authority to make such a finding is vested in the Heads of the Procuring Activities. This authority will not be construed as authorization to disregard the requirements of the Federal Supply Schedule.

§ 594.102 Orders under contracts of Federal Supply Service. (a) Delivery orders for supplies listed in the Federal Supply Schedule will be addressed and forwarded direct to the contractor indicated and shall contain sufficient data to enable prompt identification (by disbursing and auditing agencies) of the correct listing in the proper Federal Supply Schedule. These data will include contract number, item number, and, where applicable, supplement, revision or zone number.

(b) All orders issued under contracts of the Federal Supply Service will be effected by "delivery orders." (See § 596.515 of this chapter.)

(c) Each such delivery order will designate the name of the Finance Officer by whom payment is to be made.

(d) Each such delivery order will indicate on its face that prices, if shown, will be subject to the basic contract of the Federal Supply Service.

§ 594.103 Procurement from Supply Centers of Federal Supply Service—(a) Requirement. Installations of the Army Establishment are required to purchase items through the Federal Supply Service in accordance with the provisions indicated in § 594.101 (a). Purchase of

any item from Warehouse and Supply Centers of the Federal Supply Service, however, is also authorized, subject to any conditions or regulations which the Heads of interested Procuring Activities may prescribe (who, in case purchase responsibility for such item has been assigned to a particular Procuring Activity, will be the Head of such Procuring Activity). Purchase from a Warehouse and Supply Center of the Federal Supply Service of any item listed on a Federal Supply Schedule mandatory on the purchasing office, or on the Schedule of Blind-Made Products, is considered compliance with either of such Schedules.

(b) *Stock catalogs of Supply Centers.* Stock catalogs issued by each Supply Center, Federal Supply Service, list supplies regularly available for issue and contain instructions relative to the use of such catalogs. Supplies handled by these centers are, in general, supplies purchased for stock purposes by the Federal Supply Service. Such catalogs may be obtained from the appropriate supply centers.

(c) *Establishments.* In addition to the establishment in Washington, D. C., the Federal Supply Service has the following Supply Centers:

Atlanta.	Kansas City
Chicago.	New York.
Cleveland.	San Francisco.
Denver.	Seattle.
Fort Worth.	

(d) *Purchasing procedure.* Instructions included in the appropriate stock catalog will be followed in purchasing items, except insofar as such instructions are modified in this subpart.

§ 594.104 Use of Stock Catalog, Federal Supply Service, Washington, D. C. This publication of the Federal Supply Service lists only items stocked in its *Washington, D. C., warehouse*. Field installations will not place orders on the Federal Supply Service for items which are stocked in its Washington, D. C., warehouse when shipment is to be made outside the District of Columbia or adjacent counties of Maryland and Virginia.

SUBPART B—PROCUREMENT OF PRINTING AND RELATED SUPPLIES

§ 594.200 Scope of subpart. This subpart deals with procurement procedures of the Army Establishment with respect to departmental printing; field printing procured (a) from Army field printing plants, and (b) as contract field printing; and envelopes, paper, and related supplies.

§ 594.250 Requirement. Army printing must conform to the policy that publication resources in funds, materials, and equipment shall be conserved to the greatest extent consistent with efficient conduct of official functions. It is also subject to many specific provisions and restrictions, arising from the controls exercised by the Congressional Joint Committee on Printing in accordance with law.

§ 594.251 Pertinent regulations and procedures. With respect to departmental printing, printing in Army field

printing plants, and contract field printing, Procuring Activities will be guided by AR 310-5, SR 310-5-1, AR 310-10, and other applicable Army and Special Regulations, as amended.

§ 594.252 Sources of procurement for printing and reproduction.

§ 594.252-1 Departmental printing. All departmental printing shall be obtained through The Adjutant General in accordance with the 310-series of Army and Special Regulations.

§ 594.252-2 Field printing. The production of official publications by field printing, as distinguished from contract field printing, is authorized in Army field printing plants (regardless of command jurisdiction) in areas of origin, where it may be accomplished without reimbursement, if the work is within the capacity of the productive facilities of the plant selected, and is approved by or for the head of the requesting agency or Army commander, provided, that work and materials for military requirements provided from appropriations for civil functions, or vice versa, are reimbursable at cost. The following is a partial list of authorized class A and B printing plants:

CLASS A PLANTS

Aberdeen Proving Ground, Md.
Alaska Communication System, Seattle, Wash.
Albuquerque, N. Mex. (U. S. Engineer Office).
Army Chemical Center, Md.
Army Language School, Presidio of Monterey, Calif.
Baltimore Signal Depot, Middle River, Md.
Bragg, Fort, N. C.
Counter Intelligence Corps Center, Fort Holabird, Md.
Dallas, Tex. (Division Engineer).
Decatur Signal Depot, Decatur, Ill.
Detroit Arsenal, Center Line, Mich.
Eustis, Fort, Va. (Transportation School).
Fifth Army Headquarters, Chicago, Ill.
First Army Headquarters, Governors Island, N. Y.
Galveston, Tex. (U. S. Engineer Office).
Garrison U. S. Engineer Office, Riverdale, N. Dak.
Granite City Engineer Depot, Granite City, Ill.
Jeffersonville Quartermaster Depot, Jeffersonville, Ind.
Kansas City, Mo. (U. S. Engineer Office).
Letterkenny Ordnance Depot, Chambersburg, Pa.
Lexington Signal Depot, Lexington, Ky.
Little Rock, Ark. (U. S. Engineer Office).
Los Angeles, Calif. (U. S. Engineer Office).
Louisville, Ky. (U. S. Engineer Office).
Marion Engineer Depot, Marion, Ohio.
Memphis Quartermaster Depot, Memphis, Tenn.
Memphis, Tenn. (U. S. Engineer Office).
Mobile, Ala. (U. S. Engineer Office).
Monroe, Fort, Va. (Army Field Forces).
Nashville, Tenn. (U. S. Engineer Office).
New England Division Engineer, Boston, Mass.
New Orleans Port of Embarkation, New Orleans, La.
New York Quartermaster Procurement Agency, New York, N. Y.
New York Port of Embarkation, Brooklyn, N. Y.
New York, N. Y. (U. S. Engineer Office).
Ohio River Division Engineer, Cincinnati, Ohio.
Omaha, Nebr. (U. S. Engineer Office).
Philadelphia Quartermaster Depot, Philadelphia, Pa.
Philadelphia, Pa. (U. S. Engineer Office).

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Pittsburgh, Pa. (U. S. Engineer Office).
 Portland, Oreg. (U. S. Engineer Office).
 Pueblo Ordnance Depot, Pueblo, Colo.
 Red River Arsenal, Texarkana, Tex.
 Richmond Quartermaster Depot, Richmond, Va.
 Rock Island, Ill. (U. S. Engineer Office).
 Rossford Ordnance Depot, Toledo, Ohio.
 Sacramento Signal Depot, Sacramento, Calif.
 San Francisco Port of Embarkation, Fort Mason, Calif.
 San Francisco, Calif. (U. S. Engineer Office).
 Savannah, Ga. (U. S. Engineer Office).
 Seattle Port of Embarkation, Seattle, Wash.
 Seattle, Wash. (U. S. Engineer Office).
 Second Army Headquarters, Fort George G. Meade, Md.
 Sixth Army Headquarters, Presidio of San Francisco, Calif.
 Springfield Armory, Springfield, Mass.
 Tulsa, Okla. (U. S. Engineer Office).
 Worth, Fort, Tex. (U. S. Engineer Office).

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Belvoir, Fort, Va. (Engineer School).
 Benning, Fort, Ga. (The Infantry Center).
 Bliss, Fort, Tex. (AAA and GM Center).
 Detroit, Mich. (U. S. Lake Survey).
 Carlisle, Pa. (Administrative School Center).
 Frankford Arsenal, Philadelphia, Pa.
 Knox, Fort, Ky. (The Armored School).
 Leavenworth, Fort, Kans. (Command and General Staff College).
 Lee, Fort, Va. (The Quartermaster School).
 McPherson, Fort, Ga. (Third Army Area).
 Mississippi River Commission, Vicksburg, Miss.
 Monmouth, Fort, N. J. (Signal School).
 Ogden, Utah (Defense Printing Service).
 Picatinny Arsenal, Dover, N. J.
 Raritan Arsenal, Metuchen, N. J.
 Riley, Fort, Kans. (The Ground School Center).
 Rock Island Arsenal, Rock Island, Ill.
 Sill, Fort, Okla. (The Artillery School).
 St. Louis, Mo. (AG Publications Center).
 West Point, N. Y. (U. S. Military Academy).

§ 594.252-3 Duplicating. The production of official publications or material within the definition of "duplicating" may be accomplished by Army facilities, whose equipment and work operations do not require classification and authorization as an Army field printing plant, under the same provisions cited above for field printing.

§ 594.252-4 Contract field printing. Contract field printing may be procured from commercial sources, Government Printing Office field service offices, plants of Government departments (other than Army) to which payment is made from the allotments for contract field printing, Defense Printing Service Plants to which payment is made from the allotments for contract field printing, or Federal Prison Industries, Inc., which has facilities for this work. (See paragraph (b) of this section.)

(a) Field service offices of the Government Printing Office are located at:

Chicago, Ill.: 433 West Van Buren Street.
 Denver, Colo.: New Customhouse Building, Room 38.

New York, N. Y.: Post Office Building, Morgan Annex, 341 Ninth Avenue.
 San Francisco, Calif.: Post Office Building, Seattle, Wash.: 509 Dexter Avenue.

(b) Purchase orders on Federal Prison Industries, Inc. (with standard convict labor clause deleted) may be directed to:

Warden of Federal Reformatory, El Reno, Okla.
 Superintendent of Industries, Leavenworth Penitentiary, Leavenworth, Kans.

Business Manager of Industries, Atlanta Penitentiary, Atlanta, Ga.

§ 594.253 Envelopes. Envelopes even though specially printed in the course of manufacture are supply items.

§ 594.254 Requirement. (a) As prescribed by law and pertinent regulations and directives, (1) plain envelopes for use in the District of Columbia shall be procured from the Government Printing Office, (2) printed envelopes for use by the Department of the Army in the District of Columbia, and both printed and plain envelopes for use in other installations and activities in Continental United States shall be procured in accordance with current award-of-contract Schedule No. 5, issued by the Post Office Department semiannually.

(b) Excluding departmental requirements at seat of Government, District of Columbia, the following envelopes only are authorized for supply to the military service:

Item	Description
17	$4\frac{1}{2}$ by $9\frac{1}{2}$ inches, Kraft, open side.
36	5 by $11\frac{1}{2}$ inches, Kraft, open side.
49	$6\frac{1}{2}$ by $9\frac{1}{2}$ inches, Kraft, open side.
68	$8\frac{1}{2}$ by $11\frac{1}{2}$ inches, Kraft, open side or open end.
93	10 by 15 inches, Kraft, open side or open end, 5-inch flap.
104	12 by 16 inches, Kraft, open side, 5-inch flap.
111	$2\frac{1}{2}$ by $4\frac{1}{2}$ inches, Kraft, open end.
122	$3\frac{3}{4}$ by $5\frac{1}{2}$ inches, Kraft, open end.
123	$3\frac{3}{4}$ by $7\frac{1}{2}$ inches, Kraft, tag, strong eyelet at bottom, open end.
189	$3\frac{1}{2}$ by $8\frac{1}{2}$ inches, white, open side.
192	$4\frac{1}{2}$ by $9\frac{1}{2}$ inches, white, open side.
203	$3\frac{1}{2}$ by $8\frac{1}{2}$ inches, white, open side, with opaquin design inside.
204	$4\frac{1}{2}$ by $9\frac{1}{2}$ inches, white, open side, with opaquin design inside.
405	$3\frac{1}{2}$ by $8\frac{1}{2}$ inches, Kraft, open side, window.
424	$5\frac{1}{2}$ by $8\frac{1}{2}$ inches, Kraft, open side, window (for bills of lading).
435	$4\frac{1}{2}$ by $9\frac{1}{2}$ inches, white, open side, window.
504	$4\frac{1}{2}$ by $9\frac{1}{2}$ inches, white, air mail, red and blue border. $4\frac{1}{2}$ by $8\frac{1}{2}$ inches, Kraft, open side, with or without window (for War Bonds).

§ 594.255 Pertinent regulations and procedures. With respect to procurement procedures applying to mailing envelopes and related provisions applying to use of penalty indicia, Procuring Activities will be guided by SR 340-10-20, and SR 340-10-1, respectively, and other applicable Army and Special Regulations and directives.

§ 594.256 Sources of procurement for envelopes. (a) Departmental requirements are obtainable through established channels for stationery supply.

(b) Requirements other than departmental are obtainable in accordance with provisions and procedures published in SR 340-10-20.

§ 594.257 Jackets. The foregoing procedures pertaining to envelopes do not affect present methods of procuring jackets, open and thumb notched, which are obtainable on approved requisitions as are other supplies.

§ 594.258 Sources of procurement for paper. (a) Blank paper for use within the District of Columbia carried in

stock by the Government Printing Office shall be purchased from that office. Departmental requirements for paper are obtainable through established channels for stationery supply.

(b) Paper required by the military service outside the District of Columbia will be obtained in accordance with current directives or authorizations of The Quartermaster General.

§ 594.259 Related supplies. Ink, glues, and other supplies manufactured or carried in stock by the Government Printing Office shall be purchased from that office if required for use within the District of Columbia. Departmental requirements are obtainable through established channels for stationery supply.

(a) Standard items for supply to the military service outside the District of Columbia will be obtained in the normal manner from designated supply sources.

(b) Nonstandard items for supply to the military service outside the District of Columbia will be obtained by requisition on the Quartermaster Corps, citing full description and justification.

SUBPART C—PROCUREMENT OF PRISON-MADE AND BLIND-MADE PRODUCTS

§ 594.301 Prison-made products—(a) Requirement. All items manufactured by, and all services rendered by, Federal Prison Industries, Inc., shall be purchased from that agency, except in those instances in which a general or special clearance for the purchase of the item or service from commercial sources has been granted.

(b) **Responsibility.** Heads of Procuring Activities are responsible for advising Contracting Officers as to the terms and conditions of the Schedule of Products made in Federal Penal and Correctional Institutions.

(c) **General clearance.** The Department of the Army, in the following cases, has been granted a general clearance (Clearance No. C-27930) for the procurement from commercial sources of items listed in the schedule of products made in Federal Penal and Correctional Institutions:

(1) By contractors or Contracting Officers under cost-plus-fixed-fee construction or supply contracts.

(2) By Contracting Officers under fixed-price (lump sum) construction or supply contracts, wherein the Government is required to furnish certain Government materials.

(3) When immediate delivery or performance is required by the public exigency.

(4) When suitable second-hand, used, or surplus property can be procured.

(5) When required in small quantities and for delivery within 10 days.

(d) **Special clearance.** A special clearance must be obtained from Federal Prison Industries, Inc., for the procurement from commercial sources of any supplies or services listed on such Schedule of Products but not covered by the general clearance. Request by any Procuring Activity for special clearances shall be directed to Federal Prison Industries, Inc., Department of Justice, Washington 25, D. C.

(e) *Procurement procedure.* Procurement of items listed in the Schedule of Products made in Federal Penal and Correctional Institutions shall be in accordance with the detailed instructions and ordering procedures prescribed in such schedule. Current copies of the Schedule of Products may be obtained from the Federal Prison Industries, Inc., U. S. Department of Justice, Washington 25, D. C.

(f) *As additional source of supply.* In procuring items listed in the Schedule of Products, but subject to a general clearance, Contracting Officers will nevertheless consider the Federal Prison Industries as an additional source of supply.

(g) *Reference to clearance.* It is not necessary to attach a copy of the general clearance to the contract or voucher. Reference on either the contract or the voucher to general clearance No. C-27930 is sufficient.

§ 594.302 *Blind-made products*—(a) General. Supplies listed in the Schedule of Blind-Made Products issued by the Federal Supply Service, General Services Administration, will be procured from nonprofit making agencies for the blind at prices determined by the Committee on Purchases of Blind-Made Products.

(b) *Exceptions.* Purchases of supplies listed in the Schedule of Blind-Made Products need not be made from nonprofit making agencies for the blind when (1) a general clearance for the purchase of the items from commercial sources has been granted, (2) the procurement does not exceed a single unit as listed in such schedule, (3) the supplies are for use outside the continental United States, or (4) purchased from a Warehouse and Supply Center as indicated in § 594.103 (a).

(c) *General Clearance.* A general clearance, dated June 3, 1942, has been granted the Department by the Committee on Purchases of Blind-Made Products to purchase from commercial sources any item listed in the Schedule of Blind-Made Products when military necessity requires delivery of the article needed within a period of two weeks.

(d) *Special clearance.* The Federal Supply Service, General Services Administration, may grant a special clearance permitting procurement from commercial sources of supplies listed in such Schedule of Blind-Made Products (1) when necessary to meet emergency requirements or (2) when no agency for the blind is in a position to furnish the required supplies.

(e) *Procurement procedure.* Procurement of items listed in the Schedule of Blind-Made Products will be in accordance with the detailed regulations, instructions, and ordering procedures prescribed in such schedule and any amendments or price lists issued in connection therewith. Current copies of such schedule may be obtained from the Federal Supply Service, General Services Administration, Washington, D. C.

(f) *Procurement priority.* When supplies manufactured by nonprofit making agencies for the blind are similar to those manufactured in Federal peniten-

tiaries, procurement priority will be given to the Federal Prison Industries, Inc.

(g) *Clearance reference.* It is not necessary to attach a copy of the general clearance to the procurement contract or voucher. A reference on either the contract or voucher to "General Clearance dated 3 June 1942" is sufficient.

SUBPART D—PROCUREMENT UNDER THE ECONOMY ACT OR THROUGH ANOTHER FEDERAL AGENCY

NOTE: See subpart D of Part 404 of this title; no further implementation in this part.

PART 595—FOREIGN PURCHASES

Sec.

595.000 Scope of part.

SUBPART A—BUY AMERICAN ACT AND OTHER STATUTORY PROHIBITIONS ON FOREIGN PURCHASES

595.103	Applicability of Buy American Act.
595.103-4	Nonavailability of supplies or materials.
595.104	Authority to grant exceptions to Buy American Act.
595.105	Supplies excepted from Buy American Act.
595.105-1	Exceptions based on unreasonable cost.
595.106	Other statutory prohibitions on foreign purchases.
595.106-1	Prohibition of annual appropriation acts.
595.107	References in contractual documents.
595.108	Violation of Buy American Act provision in construction contracts.

SUBPART B—CANADIAN PURCHASES

595.201 Purchases from Canadian suppliers.

SUBPART C—DUTY AND CUSTOMS

AUTHORITY: §§ 595.000 to 595.201 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 595.000 *Scope of part.* Supplementary to, but consistent with, Part 405 of this title, this part sets forth policies and procedures in connection with (a) statutory prohibitions on foreign purchases, and (b) purchases from Canadian sources.

SUBPART A—BUY AMERICAN ACT AND OTHER STATUTORY PROHIBITIONS ON FOREIGN PURCHASES

§ 595.103 *Applicability of Buy American Act.* When in doubt as to whether a given purchase is or is not restricted by Title III, section 2, of the act of 3 March 1933, popularly called the Buy American Act (47 Stat. 1520; 41 U. S. C. 10a-d) or by other statutory prohibitions, Contracting Officers will forward the matter through channels to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), for decision. Each submission will include complete information upon which a decision may be based.

§ 595.103-4 *Nonavailability of supplies or materials.* (a) The Secretary has delegated to the Chief, Current Procurement Branch, Office, Assistant Chief

of Staff, G-4, Department of the Army, authority to determine under the provisions of the Buy American Act upon a proper showing of facts, that certain articles, materials, or supplies, of the class and kind to be used by the Army Establishment, or the articles, materials, or supplies from which they are manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality; and to authorize the purchase from foreign sources, and use by the Army Establishment, of such articles, materials, or supplies from which they are manufactured, as are determined after a proper showing of fact, to be not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(b) Section 405.103-4 of this title will be applied and used only after a determination, in writing, has been made by the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4. Requests for such determinations shall be forwarded through channels and will contain the following information:

- (1) Description of the item or items (include unit and quantity).
- (2) Estimated cost.
- (3) State whether duty is included in estimated cost (if duty is not included but normally would be included therein, give reason for exclusion).
- (4) If item is to be procured f. o. b. origin, show transportation costs necessary to deliver to destination.
- (5) Country of origin.
- (6) Name and address of proposed contractor.
- (7) Brief statement as to necessity for procurement.

(8) State what effort was made to procure a similar item of domestic origin (if there is no known domestic item which may be used as a reasonable substitute, so state).

(c) When the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4, has determined that the provisions of the Buy American Act are not applicable to the purchase, the signed copy of such determination will be attached to the voucher upon which payment is made.

§ 595.104 *Authority to grant exceptions to Buy American Act.* When, in the opinion of the Contracting Officer, the conditions cited in § 405.104 of this title are present, a request will be made through channels to the Secretary (address request to the Assistant Chief of Staff, G-4, Department of the Army, Attn.: Chief, Current Procurement Branch) for the issuance of a certificate of exemption. Such requests shall be submitted in complete quadruplicate (4 copies each of basic, indorsements, and inclosures) and will contain the following information:

- (a) Description of the item or items (include unit and quantity).
- (b) Estimated cost.
- (c) State whether duty is included in estimated cost (if duty is not included

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but normally would be included therein, give reasons for exclusion).

(d) If item is to be procured f. o. b. origin, show transportation costs necessary to deliver to destination.

(e) Country of origin.

(f) Name and address of proposed contractor(s), if available.

(g) Brief statement as to necessity for procurement.

(h) Funds which are available and will be obligated for the procurement.

(i) Complete justification for purchase of item of foreign source, such as excessive cost of similar items of domestic origin, loss of identification of foreign component, etc.

Accompanying request will be Certificate of Exemption prepared for the signature of the Secretary.

§ 595.105 Supplies excepted from Buy American Act.

§ 595.105-1 Exceptions based on unreasonable cost. In all cases where the differential referred to in § 405.105-1 of this title is more than \$5,000 but less than 25 percent and in all cases where the Contracting Officer considers the differential to be unreasonable, the matter will be submitted in accordance with § 595.104 for determination as to unreasonable cost.

§ 595.106 Other statutory prohibitions on foreign purchases.

§ 595.106-1 Prohibition of annual appropriation acts. It has been administratively determined that all the articles of food and clothing contained in the list set forth at the end of Subpart A of Part 405 of this title, are exempt from the general prohibition of the annual appropriation act. In the case of the procurement of other items of food and clothing which the Contracting Officer believes should be excepted, request for a certificate of exemption by the Secretary will be submitted in accordance with the procedure set forth in § 595.104.

§ 595.107 References in contractual documents—(a) General. The contract clause set forth in § 406.103-14 of this title will be inserted in all contracts for the purchase of supplies to which the Buy American Act applies.

(b) *Food and clothing.* In all contracts for the procurement of any article of food or clothing, not excepted from the prohibition of annual appropriation acts, the contract clause set forth in § 406.104-13 of this title will be inserted.

(c) *Special clause for the construction, alteration, or repair of public buildings and public works.* The specifications accompanying the invitation for bids for the construction, alteration, or repair of public buildings or public works in the United States will contain the following:

Because the materials listed below, or the materials from which they are manufactured, are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, their use in the work herein specified (subject to the requirements of the

specifications) is authorized, without regard to the country of origin:

Asbestos.	Platinum and related group metals.
Bauxite.	Rubber, crude and latex.
Chrome ore or chrome mite.	
Copper.	Timber, balsa, green-heart, lignum vitae, mahogany, and teak.
Damar gum.	Tin.
Jute and jute burlaps.	Tungsten.
Kaurigum.	
Lac and shellac.	Zinc.
Lead.	
Nickel.	

§ 595.108 Violation of Buy American Act provision in construction contracts. For procedure with respect to placing or removing from the list of ineligible contractors and disqualified bidders the name of any noncomplying contractor or bidder, see § 590.303.

SUBPART B—CANADIAN PURCHASES

§ 595.201 Purchases from Canadian suppliers. All Army contracts with suppliers or contractors located in the Dominion of Canada will be made with and administered through the Canadian Commercial Corporation through its Washington Office, except that:

(a) Under circumstances of Public Exigency as described in § 402.202-2 of this title, Procuring Activities are authorized to negotiate directly with suppliers or contractors domiciled in the Dominion of Canada without reference to the Canadian Commercial Corporation.

(b) Subject to applicable restrictions of §§ 592.205 and 592.211, Procuring Activities are authorized to negotiate direct for research services to be rendered by any university, college or educational institution located in the Dominion of Canada without reference to the Canadian Commercial Corporation or other Canadian clearing agency.

(c) When the Canadian Commercial Corporation requests that the procurement be made direct with Canadian suppliers or contractors.

SUBPART C—DUTY AND CUSTOMS

NOTE: See Subpart C of Part 405 of this title. No further implementation in this part.

PART 596—CONTRACT CLAUSES AND FORMS

Sec.

596.000 Scope of part.

596.001 Applicability of contract forms and clauses.

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

596.102 Applicability.

596.103 Required clauses.

596.103-1 Definitions.

596.103-2 Changes.

596.103-8 Assignment of Claims.

596.103-10 Federal, State, and Local taxes.

596.103-11 Default.

596.103-12 Disputes.

596.103-14 Buy American Act.

596.103-15 Convict labor.

596.103-16 Eight-Hour Law of 1912.

596.103-17 Walsh-Healey Public Contracts Act.

596.103-18 Nondiscrimination in employment.

596.103-21 Termination for convenience of the Government.

596.104 Clauses to be used when applicable.

Sec.	
596.104-1	Davis-Bacon Act.
596.104-2	Copeland Act.
596.104-3	Employment of aliens.
596.104-4	Neutrality Act of 1939.
596.104-10	Renegotiation Act of 1948.
596.104-12	Military security requirements (Security Requirements Check list).

596.104-13	Domestic food or clothing.
596.105	Additional clauses.
596.105-5	Liquidated damages.
596.150	Department of the Army clauses.
596.150-1	Partial payments.
596.150-2	Advance payments.
596.150-3	Plant protection.
596.150-4	Rental of gas cylinders.
596.151	Price Escalation Clauses.
596.151-1	General Price Escalation Clause.
596.151-2	Price Escalation Clauses for standard steel items.
596.151-3	Price Escalation Clause for aluminum.
596.151-4	Price Escalation Clause for open-end contracts and indefinite quantity contracts.
596.152	Price redetermination clauses.
596.152-1	Form II-B Price redetermination clause.
596.152-2	Form III Price redetermination clause.
596.152-3	Form IV Price redetermination clause.

SUBPART E—APPROVED CONTRACT FORMS (STANDARD, DEFENSE, AND ARMY)

596.500	Scope of subpart.
596.501	Applicability.
596.501-1	Contract clauses.
596.501-2	Deviations.
596.501-3	Local reproduction.
596.501-4	Procuring Activity contract forms.
596.501-5	Statutory authority.
596.502	List of forms.
596.502-1	Supply of certain forms.
596.503	Supply Contract; Formal Advertising (Long Form) (U. S. Standard Forms 26, 30, 31, and 32).
596.504	Supply Contract; Negotiated (Long Form) (DD Form 351).
596.511	Supply Contract; Formal Advertising (Short Form) (U. S. Standard Forms 33 and 32).
596.512	Order and Voucher for Purchase of Supplies or Services Other Than Personal (DA AGO Form 383).
596.513	Purchase Order (W. D. Form 18).
596.514	Government's Order and Contractor's Acceptance (W. D. Form 47).
596.515	Delivery Order (DA AGO Form R-5700).
596.515-1	Sample of DA AGO Form R-5700 (Delivery Order).
596.531	Construction Contract (Lump Sum); DA AGO Form R-5701.
596.531-1	Sample of form.
596.532	Cost-Plus-A-Fixed-Fee Construction Contract.
596.533	Cost-Plus-A-Fixed-Fee Architect-Engineer Contract with Optional Supervision.
596.534	Lump Sum Contract for Architect-Engineer Services with Optional Supervision.
596.535	Cost-Plus-A-Fixed-Fee Architect-Engineer-Construction Management Services Contract.
596.536	Rental Agreement; Government-Owned Construction or Road Maintenance Equipment.
596.541	Letter Contract (Cost Type); DA AGO Form R-5702.
596.541-1	Sample of form.
596.542	Letter Contract (Fixed Price Type); DA AGO Form R-5703.
596.542-1	Sample of form.
596.561	Negotiated Utility Services Contract (Short Form).

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596.562	Negotiated Utility Services Contract (Long Form).
596.563	Contract for Academic Instruction; DA AGO Form 357.
596.564	Order Form to Contract for Academic Instruction; DA AGO Form 358.
596.565	Contract for Movement of Household Goods and Effects (DD Form 327).
596.566	Master Lump Sum Ship Repair Contract.
596.567	Stevedoring Contract.
596.571	Invitation for Bids (Construction Contract).
596.572	Bid (Construction Contract).
596.573	Plant and Equipment Schedule.
596.574	Unit Price Schedule.
596.577	Request for Proposal and Contractor's Proposal (Short Form); W. D. Form 104.
596.578	Request for Proposal and Contractor's Proposal (Long Form); W. D. Forms 105, 105A, 105B, and 105C.
596.579	Security Requirements Check List; DD Form 254.
596.580	Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract (U. S. Standard Form 119).
596.581	Abstract of Bids (Short Form); W. D. Form 14.
596.582	Abstract of Bids (Long Form); W. D. Form 29.
596.583	Abstract of bids (Long Form); Continuation Sheet; W. D. Form 29A.
596.591	Contract of Sale of Property (Negotiated Sale)

AUTHORITY: §§ 596.000 to 596.591 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 596.000 *Scope of part.* Supplementary to, but consistent with Part 406 of this title, this part sets forth uniform contract clauses and standard contract forms for use in connection with the procurement of supplies and services by the Army Establishment. Prescribed standard contract forms are listed in Subpart E of this part.

§ 596.001 *Applicability of contract forms and clauses.* (a) *General.* Approved contract forms and clauses currently in use in the respective Procuring Activities, which are not prescribed by and which are not inconsistent with the contract forms and clauses prescribed by Subchapter A, Chapter IV of this title or this Procedure, may be used by any Procuring Activity in accordance with its instructions. If Subchapter A, Chapter IV of this title or this Procedure prescribes a contract form such form must be used in accordance therewith unless the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, grants a deviation. If Subchapter A, Chapter IV of this title or this Procedure, however, prescribes or approves a contract clause for use, even if for use "when applicable" or "when it is desired to cover the subject matter thereof," no contract clause shall be used in substitution for such clause unless such substitute clause (1) is within the scope of the variations in such prescribed or approved clause expressly permitted by Subchapter A, Chapter IV of this title or this Procedure, or (2) is the prescribed or approved clause plus provisions supple-

mentary to and not inconsistent with any prescribed or approved clause. For example, § 408.107-4 of this title "approves for use" a "Foreign Patent Rights Clause," which grants the Government foreign patent rights concerning any invention financed by the contract. If the contractor and the Contracting Officer agree that the Government should have not only such foreign patent rights but also reproduction rights with respect to certain foreign "background" patents held by the contractor, the contract must contain the clause set out in § 408.107-4 of this title plus a provision concerning such "background" patents. Since the clause for such "background" patent rights set out in § 408.107-3 of this title is expressly subject to the qualification that "the particular wording of a provision granting such rights to the Government is a matter of negotiation in each case," the clause set out in § 408.107-3 of this title need not be used verbatim as the additional provision but the additional provision must be modeled on such clause and must be consistent with the policy expressed in § 408.107-3 of this title.

(b) *Applicability of contract forms and contract clauses to contracts to be performed in foreign countries.* (1) The contract forms and clauses prescribed or approved by subchapter A, chapter IV of this title and this Procedure will be used in all contracts whether performed in whole or in part in the United States, its territories or possessions, or in foreign countries. Certain clauses are applicable only in some areas but not in other areas. For each section of Subchapter A, Chapter IV of this title and this Procedure prescribing or approving the use of a contract form or a contract clause, the corresponding section of this Procedure has been annotated, for use in those areas where the form or clause is not applicable or is not applicable exactly as written, to authorize modification of the form or clause, or the deletion of the form or clause. Where no annotation is made in this Procedure, the modification or deletion is authorized by the applicable section of Subchapter A, Chapter IV of this title or the clause is applicable as written. Care must be exercised in modifying or deleting clauses, where authorized, to insure that proper action is taken as in the following examples:

(i) In view of the provisions of the clauses relating to Inspection and Responsibility for Supplies, appropriate provisions may be necessary for insertion in the Schedule to define or limit the contractor's responsibility and liability where the items are procured in a foreign country and delivered to an Army activity located in that foreign country for subsequent transhipment to a destination in the United States.

(ii) When substituting the clause concerning Federal, State, and Local Taxes, advantage must be taken of tax exemptions possible in the place of performance.

(iii) The deletion of the clause regarding the Buy American Act is authorized where the supplies are procured outside and are used outside the United States, its territories and possessions. Foreign procurement of supplies which

are shipped to the United States, its territories and possessions, come under the provisions of the Buy American Act unless specifically excepted by the Secretary of the Army, his duly authorized representative, or the provisions of the Act.

(iv) Clauses relative to the Eight-Hour Law of 1912, Nondiscrimination in Employment, the Davis-Bacon Act, the Copeland Act, and the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act of 1938 were prescribed by various statutes and executive policies in order to protect American labor from certain abuses. Such clauses obviously are not applicable and should not be included in contracts to be performed in foreign countries insofar as native foreign labor is concerned. Note, however, that such clauses may apply to American citizens employed under such contracts in foreign countries.

(2) Determination as to the applicability of a particular contract form or contract clause often can be made only by consulting the various statutes, decisions, and policies which established the requirement and, in many cases, involves obtaining interpretations of various statutes from other executive departments. In those cases where applicability is in doubt, Contracting Officers will forward requests for interpretations to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) through the Head of the Procuring Activity involved.

SUBPART A—CLAUSES FOR FIXED-PRICE SUPPLY CONTRACTS

§ 596.102 *Applicability.* Section 406.102 of this title is not intended to apply to those purchase orders amounting to \$1,000 or less.

§ 596.103 *Required clauses.* Except as provided in § 596.102, all of the clauses specified in §§ 406.103-1 through 406.103-21 of this title will be inserted in all fixed-price supply contracts subject to the instructions contained in § 406.103 of this title, § 596.001 and in this section. The additional contract clauses, contained in §§ 596.103 through 596.103-21 but not contained anywhere in subchapter A, Chapter IV of this title will also be inserted in all fixed-price supply contracts as specified in this Procedure.

§ 596.103-1 *Definitions.* The "Definitions" clause contained in § 406.103-1 of this title will be inserted but additional definitions may be included in accordance with the instructions of each Procuring Activity when such additional definitions are not inconsistent with such "Definitions" clause.

§ 596.103-2 *Changes.* (a) The "Changes" clause contained in § 406.103-2 of this title will be inserted but with respect to such clause, in accordance with the instructions of each Procuring Activity, the period of "30 days" within which any claim for adjustment must be asserted may be varied. In special cases the "Changes" clause may be made applicable to changes in provisions other than those relating to drawings, designs, specifications, method of shipment or packing, and place of delivery, so long

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as such extended applicability of the "Changes" clause would not be inconsistent with the provisions of the clause contained in § 406.103-2 of this title.

(b) Additional quantities of supplies which were not initially contemplated in the contract will not be ordered under the "Changes" clause since such a practice might be used to defeat the requirements for competitive procurement.

(c) Accelerated deliveries will be provided for by a supplemental agreement modifying the contract rather than through the use of the "Changes" clause. However, such a supplemental agreement should not be used to provide additional compensation to the contractor for accelerated deliveries to meet the delivery schedules prescribed in the contract.

§ 596.103-8 Assignment of claims. In cases where special circumstances make it advisable in the best interests of the Government, the last sentence of paragraph (a) of the "Assignment of Claims" clause set forth in § 406.103-8 of this title ("no set-off provision") may be deleted with the approval of the Head of a Procuring Activity.

(a) In 1940 by the enactment of the Assignment of Claims Act (54 Stat. 1029; 31 U. S. C. 203 and 41 U. S. C. 15), approved October 9, 1940, the restrictions created by sections 3477 and 3737 of Revised Statutes subject to certain conditions therein specified made inapplicable to any case in which monies due or to become due under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution including any Federal lending agency. The conditions specified in the act are, in general, as follows:

(1) Claims for monies due or to become due a contractor from the Government under a contract may be assigned to a bank, trust company or other financing institution, including any Federal lending agency. Any such assignment will cover all amounts payable under the contract and not already paid, and will not be made to more than one party, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(2) In the event of any such assignment the assignee will file written notice of the assignment, together with one copy of the instrument of assignment, with each of the following:

- (i) General Accounting Office.
- (ii) The Contracting Officer.

(iii) The surety or sureties upon the bond or bonds, if any, in connection with the contract.

(iv) The Disbursing Officer designated in the contract to make payments thereunder.

(b) If provided in a contract, payment to an assignee of any claim under the contract shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of the contract.

(c) Where direct payment is made to the assignee, the contractor will furnish on each voucher, invoice, or other supporting paper a statement to the effect

that he recognizes the assignment, its validity, and the right of the assignee to receive payment.

(d) In connection with the assignment of claims, Contracting Officers will, upon request of the contractor, furnish proposed assignees information regarding the status of the contract at the time of the assignment. In so doing, the Contracting Officer will advise the assignee that the information is so furnished only for confidential use in connection with the assignment.

§ 596.103-10 Federal, State, and local taxes. In effecting procurement outside the United States, its territories and possessions, substitute the clause set forth in § 600.401 of this chapter in lieu of the Clause prescribed in § 410.401 of this title. (See § 596.001 (b) (1) (ii).)

§ 596.103-11 Default.—(a) Steps to be taken in event of default. In any case where a contractor refuses or fails to carry out the terms of the contract or to make progress so as to endanger the performance of the contract, the Contracting Officer may take any of the following courses:

(1) Terminate the contract under the provision permitting termination in event of default, preserving the Government's rights against any surety.

(2) Permit the contractor to proceed and charge contractor with the actual damages resulting from the delays or default. If the contract provides for liquidated damages, such damages and not actual damages must be charged. In this connection see §§ 535.5 through 535.9 of this chapter.

(3) Enter into a supplemental agreement with contractor's surety, if any, providing for the completion of performance of the contract and for payment therefor. Such supplemental agreement should clearly state that all rights against the contractor are preserved so far as the surety does not undertake to cure the effect of the defaults by the contractor. Where the contractor has not given a performance bond, or where the surety under such a bond has pursuant to any requirement thereof been given an opportunity (if such requirement is contained in the bond) to complete the contract but does not elect to do so, the Government may terminate the contract pursuant to any applicable provision thereof, and pursue its remedies against the contractor and/or surety.

(b) Notification to contractor. In the event a Contracting Officer takes any of the steps prescribed in (a) above, the contractors will be promptly furnished a copy of the findings of fact in connection with delays in the completion of contracts, but the findings so furnished will be limited to a statement of the facts and the extent of the delay.

(c) Procedure when remedies under default clause are pursued. If a contractor defaults and it is determined to pursue the remedies provided by the contract provision, the following procedure will, in general, be followed:

(1) The contractor will be notified in writing that his right to proceed has been terminated.

(2) A copy of the termination notice will be furnished to the Disbursing Officer who will be advised to withhold further payments to the contractor pending additional instructions.

(3) Supplies or materials similar to those called for by the contract will then be procured elsewhere by contract or from Government manufacturer at as reasonable a price as practicable considering the quantity and quality required by the Government and the time in which the supplies or materials are required. In the case of a construction contract, the work will be completed according to the plans and specifications either by such other responsible contractor who offers the lowest price or by Government plant and hired labor. In either construction or supply contracts the excess cost to the Government will be charged to the contractor and the proper Disbursing Officer will be notified to withhold payments to cover the excess costs, pending payment thereof by the contractor.

(4) The Contracting Officer, immediately upon making the contract for the purchase of the materials or supplies, or for the completion of the construction contract, will request immediate remittance of the excess cost from the defaulting contractor.

(5) If the Contracting Officer collects the entire amount of the excess cost, he will furnish a report with reference thereto to the proper Disbursing Officer, transmitting the amount collected for disposition by the Disbursing Officer in accordance with § 535.8 (g) of this chapter.

(6) If the Contracting Officer is unable to make collection of the entire amount of excess cost, he will furnish a complete report of the facts and circumstances to the proper Disbursing Officer. If the contractor was given financial assistance by the Government, appropriate steps will be taken to protect the interest of the Government.

(d) Report of default. (1) The report to which reference is made in paragraph (g) of this section will be made in such manner as may be prescribed by the Office, Chief of Finance, or, if the contract in question is a Federal Supply Schedule contract, by letter, in duplicate, addressed to the Federal Supply Service as indicated in paragraph (h) of this section.

(2) The report will be submitted to the Disbursing Officer, in quadruplicate.

(e) Collection of excess cost. (1) The Disbursing Officer, upon receipt of the report to which reference is made in paragraph (g) of this section, will effect collection of the excess cost from the defaulting contractor by deducting the amount thereof from any funds payable to the defaulting contractor.

(2) If the Disbursing Officer effects collection of the entire amount of excess cost due the Government in accordance with subparagraph (1) of this paragraph, he will indicate that action on the appropriate report, sign it, and dispose of the report as follows:

(i) The original and quadruplicate copy will be transmitted to the Chief of Finance, the original to be forwarded to the General Accounting Office and the

quadruplicate copy to be retained by the Chief of Finance.

(ii) The duplicate copy will be filed in the office of the Disbursing Officer.

(iii) The triplicate and quadruplicate copies, if any, will be transmitted to the Contracting Officer, marked for his information only.

(3) If the Disbursing Officer finds it impracticable to collect the entire amount of excess cost due the Government, he will indicate his action and recommendation on the appropriate report, sign it, and dispose of the report as follows:

(i) The original and quadruplicate copy will be transmitted to the Chief of Finance, the original to be forwarded to the General Accounting Office and the quadruplicate copy to be retained by the Chief of Finance.

(ii) The duplicate copy will be filed in the office of the Disbursing Officer.

(iii) The triplicate copy will be transmitted to the Contracting Officer with a notation to the effect that the excess cost could not be collected and that the matter has been reported to the Chief of Finance, for reference to the General Accounting Office.

(f) *Amount chargeable against defaulting contractor.* A purchase or purchases against the account of a defaulting contractor must not exceed the quantity originally ordered, with consideration given, of course, to the variation clause, if any, in the contract, and must be secured if practicable on the same unit basis, such as each, dozen, pound. However, this does not preclude the Government from entering into one contract with the completing contractor which includes additional needed supplies provided that the excess costs to be charged against the account of the defaulting contractor are determined as provided in the preceding sentence of this paragraph.

(g) *Report procedures—(1) Where excess cost involved.* In the event that collection of the excess cost is effected by means of contractor's check, money order, cash, or any means other than set-off against another account due the contractor, Standard Form No. 1044 (Schedule of Collections), properly completed, will be submitted in accordance with AR 35-780 with the required number of copies to be submitted with the report.

(2) *Where no excess cost involved.* If purchase is made against a defaulting contractor under a Department contract and no excess cost is involved, a report on the appropriate form will be made and disposition of the report will be made as indicated in paragraph (e) (3) of this section.

(h) *Federal supply schedule—(1) Ordering office.* Before declaring a contractor in default, it is suggested that ordinarily ordering offices should notify the contractor in writing that unless satisfactory performance occurs by a specified date, which should allow a reasonable time for performance, his right to proceed further under the purchase order will be considered terminated and he will be held liable for any excess costs resulting from purchasing the supplies or services elsewhere. This step would not be taken ordinarily when the default in-

volves an attempted fraud on the United States, or when it would be obviously futile, as for example, when the contractor has already declined to perform. Where excess costs are anticipated, the ordering office may likewise decide to withhold sufficient funds due the contractor as offset security. Ordering offices will endeavor to minimize excess costs to be charged against the contractor and to collect, by check or setoff, excess costs owed. Such collected funds are usually for deposit into the Treasury as miscellaneous receipts.

(2) *Federal Supply Service.* Where ordering offices are notified by the Federal Supply Service that it has declared the contractor in default, ordering offices will thereafter refuse to accept further performance by the contractor or place further purchase orders with him. Ordering offices will thereafter purchase against the account of the contractor from replacing contractors designated by the Federal Supply Service or in such other manner as directed by the Federal Supply Service.

(3) *Reports.* Ordering offices will report to the Purchase Branch, Federal Supply Service, Washington 25, D. C., the details concerning all material instances of unsatisfactory performance by the contractor, whether or not properly adjusted and settled. Ordering offices will also report, as may be directed by the Federal Supply Service, all purchases made against the account of a contractor placed in default by the Federal Supply Service.

§ 596.103-12 *Disputes.* The "Disputes" Clause contained in § 406.103-12 of this title will be inserted as specified, except for contracts entered into by major oversea commanders and to be performed outside the United States (48 states and the District of Columbia) (see par. (c) of this section). The "Disputes" Clause may be modified to provide for an intermediate appeal to the Head of a Procuring Activity upon approval of the Head of the Procuring Activity concerned.

(a) *Armed Services Board of Contract Appeals.* The charter and rules of the Armed Services Board of Contract Appeals are set forth in Appendix A of the Armed Services Procurement Regulation.

(b) *Procedure for handling disputes.* Disputes arising under Army contracts should be reviewed and screened to insure, in so far as practicable and consistent with the rights of contractors, that only those appeals which require consideration and determination by the Armed Services Board of Contract Appeals be forwarded to the Board for disposition.

(1) *Correspondence.* All official correspondence with the Board will be addressed "Board of Contract Appeals, Office of the Under Secretary of the Army, Washington 25, D. C."

(2) *Time of filing of appeal to be endorsed.* When the appeal has been received by the Contracting Officer or the Head of a Procuring Activity, as the case may be, he will endorse thereon the date of filing and forward the appeal, as hereinafter provided.

(3) *Findings of fact and decisions.*

(i) In rendering a decision on any dispute involving a question of fact, the Contracting Officer or the Head of a Procuring Activity, as the case may be, will prepare and sign findings of fact, a true copy of which with his written decision will be promptly furnished the contractor; and in case of appeal, the officer from whose decision the appeal is taken will forward a true copy of such finding and of the decision, as herein-after provided.

(ii) *Forwarding by Contracting Officer.* When an appeal is taken from the decision of a Contracting Officer he will promptly forward to the Head of the Procuring Activity concerned, a true copy of his findings of fact and of his decision; the original written appeal and the required copies thereof; a transcript of any evidence taken by him; and all pertinent papers in the case.

(iii) *Forwarding by Heads of Procuring Activities of appeals from Decisions of Contracting Officer.* (a) If the appeal from the Contracting Officer's decision is to the Secretary, the Head of the Procuring Activity receiving the appeal will exercise the utmost care to see that the record is complete; will add to the file, if not already in it, an original duplicate or true copy of the contract, including the plans and specifications and all changes and supplemental agreements; and will promptly forward the complete file to the Board.

(b) If for any reason an appeal cannot be processed by the Procuring Activity in accordance with this section within 10 days from the date of appeal is received by the Activity, the Head of the Procuring Activity will report to the Board the date on which the appeal was received in his office and the reason for the delay in accomplishing the processing.

(4) *Forwarding appeals from Heads of Procuring Activities.* The Head of a Procuring Activity, within 10 days after the receipt of a written appeal from his decision, will forward the original written appeal and the required copies thereof to the Board, together with the following papers: a copy of his findings of fact and decision; the advisory report, if there be one, of the contract settlement board in his office; a transcript of any testimony taken during the course of the proceedings; a duplicate original or a certified copy of the contract, including the plans and specifications and all changes and supplemental agreements; the findings of fact and decision of the Contracting Officer; and all papers and correspondence pertaining to the contract, pertinent to the consideration of the appeal. In cases wherein an appeal under the terms of a contract is filed with a Procuring Activity, the Head of the Activity concerned will, prior to forwarding the appeal to the Armed Services Board of Contract Appeals:

(i) Carefully review the "decision" or "findings of fact" from which the appeal is taken to ascertain that all basic "findings of fact" are complete as to all issues bearing upon the matter in dispute. He will also ascertain that all evidence relied upon (whether documentary or oral testimony) in support of the "decision"

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or "findings of fact" does support the Government's position; and that all essential witnesses and documentary evidence will be available to the Board at the time of the hearing of the appeal. When appropriate, the Head of the Procuring Activity will conduct an investigation to accomplish these objectives.

(ii) Refer to the Contracting Officer for supplemental findings cases in which the "decision" does not contain all of the basic findings required to support it, or in which the "findings of fact" are not complete as to all issues bearing upon the matter in dispute.

(iii) Refer to the Contracting Officer for reconsideration all cases wherein a timely appeal has been taken and it is clear from the evidence, contractual provisions and the applicable law, that the Contracting Officer's "decision" or "findings of fact" is erroneous or not supported by competent and available evidence. Attention is invited to the requirement that the Contracting Officer must give his personal and independent consideration to the making of each "decision" or "findings of fact," with the aid of such technical and legal advice as may be available to him, and the exercise of this function can neither be delegated to nor usurped by anyone not authorized by the terms of the contract. Whenever upon such reconsideration the Contracting Officer modifies his "decision" or "findings of fact" so as to eliminate a part or all of issues involved in the appeal, he will request the appellant to furnish, for incorporation in the appeal papers, a statement withdrawing its appeal as to the issues thus eliminated.

(iv) Prepare and forward to the Chief Trial Attorney's office a statement of the factual and legal issues involved in the appeal and a brief summary of the evidence (both documentary and oral testimony) which will be available at the hearing to support the Government's position, together with comments, when pertinent, as to the probable implications on procurement policies of the decision upon the subject appeal.

(5) *Appeals filed with the Secretary or the Board.* In cases wherein an appeal is filed directly with the Office of the Secretary of the Army or the Armed Services Board of Contract Appeals, the Board, pursuant to its rules of procedure, will promptly furnish a copy thereof to the Procuring Activity concerned, through the Chief, Trial Attorney's office. Upon the receipt of such appeal the Procuring Activity will process the same as though it had been initially filed with the Activity.

(6) *New facts or circumstances.* Upon discovery of new facts or circumstances the Chief Trial Attorney is authorized, in appropriate cases, to return appeals to the Procuring Activity for further reconsideration in the light of the additional facts or circumstances disclosed.

(7) *Appeals improperly filed.* If any officer or agency of the Department other than the officer or agency designated in the contract, should receive a written appeal, the recipient will, after endorsing thereon the date of its receipt, immediately transmit the appeal to the

Head of the Procuring Activity concerned:

(i) For appropriate action as provided in subparagraph (4) of this paragraph if the appeal is from the decision of the Head of a Procuring Activity, or

(ii) If the appeal is from the decision of a Contracting Officer, then for action as required by subparagraph (3) of this paragraph.

(c) *Major oversea commands.* (1) The following "Disputes" Clause will be inserted in all contracts entered into by major oversea commands and to be performed outside the United States (48 States and the District of Columbia) in lieu of the clause set forth in § 406.103-12 of this title:

DISPUTES

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Commanding General (-----*) and the decision of the Commanding General (-----*), or that of his duly authorized representative (other than the Contracting Officer under this contract) for the hearing of such appeals, upon personal approval by the Commanding General (-----*) or his designated deputy, shall be final and conclusive upon the parties hereto when the amount involved in the appeal is \$50,000 or less; provided that, if no appeal is taken, within the said 30 days, the decision of the Contracting Officer shall be final and conclusive. When the amount involved is more than \$50,000 the decision of the Commanding General (-----*) shall be subject to written appeal within 30 days after the receipt thereof by the Contractor to the Secretary of the Army and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall be final and conclusive; provided that, if no such further appeal is taken, within the said 30 days, the decision of the Commanding General (-----*) shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with Contracting Officer's decision.

(2) Each Commanding General of a major oversea command will appoint within his command a Board to be known as "(name of command) Board of Contract Appeals." The Board will consist of three or more members who will be persons trained in the law, one of whom will be designated by the appointing authority as the President of the Board. There will also be appointed a Recorder of the Board who will perform such duties as the Board may prescribe. The Recorder of the Board may also be a member thereof.

(3) The Board, created pursuant to the provisions of subparagraph (2) of this paragraph, will be designated by the

* Specify name of major oversea command concerned.

Commanding General as his duly authorized representative to hear, consider, and decide, as fully as he might do, all appeals to him under contracts having such provisions. The Board's final decision, however, will be subject to his personal approval, or that of his deputy designated for such purpose. The Board will be granted all powers necessary and incident to the proper performance of its duties and, with the approval of the appointing authority, will adopt its own methods of procedure, rules, and regulations for its conduct and for the preparation and presentation of appeals and issuance of decisions.

(4) Each commanding general of a major oversea command will designate one or more trial attorneys, who will be qualified attorneys at law, for the preparation and presentation of the contentions of the Procuring Activity in relation to appeals filed with the Board.

§ 596.103-14 *Buy American Act.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. (See § 596.001 (b) (1) (iii).)

§ 593.103-15 *Convict labor.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted.

§ 596.103-16 *Eight-Hour Law of 1912.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. (See § 596.001 (b) (1) (iv).)

§ 596.103-17 *Walsh-Healey Public Contracts Act.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. See § 596.001 (b) (1) (iv).

§ 596.103-18 *Nondiscrimination in employment.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. See § 596.001 (b) (1) (iv).

§ 596.103-21 *Termination for convenience of the government.* Insert the contract clause appropriate for use in fixed-price supply contracts as set forth in Part 407 of this title, provided that prior to the issuance and effective date of Part 407 of this title, there shall be inserted such termination clause as is prescribed by Part 597 of this chapter.

§ 596.104 *Clauses to be used when applicable.* The contract clauses set forth in § 406.104 of this title and in this section shall be used when applicable subject to the instructions contained in § 406.104 of this title; §§ 596.001 and 596.104 through 596.104-13.

§ 596.104-1 *Davis-Bacon Act.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. See § 596.001 (b) (1) (iv).

§ 596.104-2 *Copeland Act.* In effecting procurement outside the United States, its territories and possessions, this clause will be deleted. See § 596.001 (b) (1) (iv).

§ 596.104-3 *Employment of aliens.* In effecting procurement outside the United States, its territories and possessions,

this clause will be deleted. Contracting Officers will exercise the utmost care in effecting this type procurement to avoid the compromise of classified data.

§ 596.104-4 Neutrality Act of 1939.—
(a) *Basic law.* By section 12 of the act of November 4, 1939 (22 U. S. C. 452), also referred to as the "Neutrality Act of 1939," the National Munitions Control Board was established, upon the recommendation of which the President was authorized to proclaim from time to time, a list of articles which shall be considered arms, ammunition and implements of war for the purposes of said Act. The Secretary of State promulgates rules and regulations with regard to said Act and except where otherwise provided by law, the administration was vested in the Department of State. The Neutrality Act further provides for the registration of persons engaged in manufacturing, exporting or importing any arms, ammunition, or implements of war listed in the President's Proclamation; and that no purchase of arms, ammunition, or implements of war shall be made on behalf of the United States from any person who shall have failed to register under the provision of said Act.

(b) *Proclamation of the President.* (1) The President, in Proclamation 2776, March 26, 1948, has proclaimed the articles which are considered arms, ammunition, and implements of war for purposes of basic law as follows:

Category I. Small arms and machine guns, rifles, carbines, revolvers, pistols, machine pistols, and machine guns (using ammunition of caliber .22 or over); barrels, mounts, breech mechanisms, and stocks therefor.

Category II. Artillery and projectors: Guns, howitzers, cannon, mortars, and rocket launchers (of all calibers), military flame throwers, military smoke, gas, or pyrotechnic projectors; barrels, mounts, and other components thereof.

Category III. Ammunition: Ammunition of caliber .22 or over for the arms enumerated under Categories I and II above; cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun); projectiles and other missiles, percussion caps, fuses, primers, and other detonating devices for such ammunition.

Category IV. Bombs, torpedoes, and rockets: Bombs, torpedoes, grenades, rockets, mines, guided missiles, depth charges, and components thereof, apparatus and devices for the handling, control, discharge detonation, or detection thereof.

Category V. Fire control equipment and range finders: Fire control equipment, range, position and height finders, spotting instruments, aiming devices (gyroscopic, optic, acoustic, atmospheric, or flash), bombsights, gun sights, and periscopes for the arms, ammunition, and implements of war enumerated in Proclamation 2776.

Category VI. Tanks and ordnance vehicles: Tanks armed or armored vehicles, armored trains, artillery and small arms repair trucks, military half-tracks, tank recovery vehicles, tank destroyers; armor plate, turrets, tank engines, tank tread shoes, tank bogie wheels, and idlers therefor.

Category VII. Poison gas and toxicological agents: All military toxicological and lethal agents and gases; military equipment for the dissemination and detection thereof and defense therefrom.

Category VIII. Propellants and explosives: Propellants for the articles enumerated in Categories III, IV, and VII; military high explosives.

Category IX. Vessels of war: Vessels of war of all kinds, including amphibious craft, landing craft, naval tenders, naval transports and naval patrol craft, armor plate and turrets therefor; submarine batteries and nets, and equipment for the laying, detection and detonation of mines.

Category X. Aircraft: Aircraft; components, parts, and accessories therefor.

Category XI. Miscellaneous equipment: (1) Military radar equipment, including components thereof, radar countermeasures and radar jamming equipment; (ii) Military stereoscopic plotting and photo interpretation equipment; (iii) Military photo theodolites, telemetering and Doppler equipment; (iv) Military superhigh speed ballistic cameras; (v) Military radiosondes; (vi) Military interference suppression equipment; (vii) Military electronic computing devices; (viii) Military miniature and subminiature vacuum tubes and photoemissive tubes; (ix) Military armor plate; (x) Military steel helmets; (xi) Military pyrotechnics; (xii) Synthetic training devices for military equipment; (xiii) Military ultrasonic generators; (xiv) all other material used in warfare which is classified from the standpoint of military security.

(2) Proclamation 2776 superseded Proclamation 2717, February 14, 1947, on the same subject, effective April 15, 1948.

(c) *Interpretation of basic law by Department of State.* Munitions Division Bulletin No. 1, Department of State, entitled "New requirements relating to the licensing for export and import of articles defined as arms, ammunition and implements of war," April 1, 1948, indicates the procedure to be followed by those engaged in the business of manufacturing, exporting or importing any of the arms, ammunition, or implements of war enumerated in the President's Proclamation pending issuance of a revised edition of the pamphlet "International Traffic in Arms". Inquiries relative to the application of Proclamation 2776 should be submitted to the Munitions Division, Department of State, Washington 25, D. C.

(d) *Invitations for bids, requests for proposals, and negotiated contracts.* If any item being purchased is listed in any current proclamation issued by the President under section 12 of the Neutrality Act of 1939 (act of November 4, 1939, 54 Stat. 10; 22 U. S. C. 452) the clause prescribed by § 406.104-4 of this title, Neutrality Act of 1939, will be included in all invitations for bids, or in case of negotiation, in the request for proposals if a request for proposals is used. If a request for proposals is not used, the clause will be brought to the attention of prospective contractors during negotiation and the clause incorporated in any resultant contract.

(e) *Overseas.* In effecting procurement of arms, ammunition or implements of war, defined as such by the Neutrality Act of 1939 and subsequent Presidential Proclamations, outside the United States, its territories and possessions, clearance of the procurement, prior to consummation, will be obtained from, and insertion or deletion of the clause will be as dictated by the Munitions Division, Department of State, except that in the following cases, prior clearance need not be obtained and the clause will not be inserted:

(1) In areas of military occupation.

(2) In areas outside the United States and its territories where the Department of State has entered into treaties or other agreements with the countries or authorities concerned with respect to the exporting or importing of arms, ammunition or implements of war.

(3) Those geographical areas or those procurement items in which or for which the Department of State has made a blanket exception or a previous exception to the act.

§ 596.104-10 Renegotiation Act of 1948. In addition to the instructions contained in § 406.104-10 of this title, Contracting Officers shall follow the instructions set forth below in determining whether a contract should contain a renegotiation clause.

(a) Section 618 of the Defense Appropriation Act, 1951, extends the coverage of the Renegotiation Act of 1948 to all negotiated contracts for procurement in excess of \$1,000 entered into during the fiscal year 1951 by or on behalf of the Department of Defense (including the Department of the Army, Department of the Navy, and Department of the Air Force), and all subcontracts thereunder in excess of \$1,000.

(b) Section 618 of the Defense Appropriation Act, 1951, is quoted herewith:

Sec. 618. (a) All negotiated contracts for procurement in excess of \$1,000 entered into during the current fiscal year by or on behalf of the Department of Defense (including the Department of the Army, Department of the Navy, and Department of the Air Force), and all subcontracts thereunder in excess of \$1,000, here hereby made subject to the Renegotiation Act of 1948 in the same manner and to the same extent as if such contracts and subcontracts were required by such act to contain the renegotiation article prescribed in subsection (a) of such act. Each contract and subcontract made subject to the Renegotiation Act of 1948 by this section shall contain an article stating that it is subject to the Renegotiation Act of 1948. In determining whether the amounts received or accrued to a contractor or subcontractor during his fiscal year from contracts and subcontracts subject to the Renegotiation Act of 1948 amount in the aggregate to \$100,000, receipts or accruals from contracts and subcontracts made subject to such act by this section shall be added to receipts or accruals from all other contracts and subcontracts subject to such act.

(b) Notwithstanding any agreement to the contrary, the profit limitation provisions of the act of March 27, 1934 (48 Stat. 503, 505), as amended and supplemented, shall not apply to any contract or subcontract which is subject to the Renegotiation Act of 1948.

(c) The provisions of the above-quoted section 618 do not apply to certain contracts and subcontracts thereunder because of the mandatory exemptions contained in the Renegotiation Act, nor does it apply to certain other contracts and subcontracts by reason of permissive exemptions which have been granted by the Military Renegotiation Policy and Review Board. The mandatory exemptions, which are to be found in § 423.341 of this title (Military Renegotiation Regulations), are hereinafter summarized. The mandatory exemptions are as follows:

(1) Contracts entered into between governmental agencies and subcontracts thereunder are exempt by reference to

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subsection (i) (1) (A) of the Renegotiation Act of February 25, 1944, as amended. (See §§ 423.342 to 423.342-2 of this title (Military Renegotiation Regulations).)

(2) Contracts and subcontracts for certain raw materials are exempt by reference to subsection (i) (1) (B) of the Renegotiation Act of February 25, 1944, as amended. (See §§ 423.343 to 423.343-4 of this title (Military Renegotiation Regulations).)

(3) Contracts and subcontracts for certain agricultural commodities are exempt by reference to subsection (i) (1) (C) of the Renegotiation Act of February 25, 1944, as amended. (See § 423.343-2 of this title (Military Renegotiation Regulations).)

(4) Contracts and subcontracts with certain tax-exempt institutions are exempt by reference to subsection (i) (1) (D) of the Renegotiation Act of February 25, 1944, as amended. (See §§ 423.344 to 423.344-2 of this title (Military Renegotiation Regulations).)

(5) Construction contracts awarded as a result of competitive bidding are exempt by reference to subsection (i) (1) (E) of the Renegotiation Act of February 25, 1944, as amended. (See §§ 423.345 to 423.345-2 of this title (Military Renegotiation Regulations).)

(6) Subcontracts under exempt contracts and subcontracts are exempt by reference to subsection (i) (1) (F) of the Renegotiation Act of February 25, 1944, as amended. (See §§ 423.346 to 423.346-2 of this title (Military Renegotiation Regulations).)

(d) The contracts and subcontracts to which the above-quoted section 618 does not apply because of certain permissive exemptions granted by the Military Renegotiation Policy and Review Board are as follows:

(1) *Sale, rental or exchange of certain property*—(i) *Exemption*. (a) Contracts for the sale or rental of any interest in existing real estate (see, however, § 423-335-1 of this title, pertaining to subcontracts, Military Renegotiation Regulations).

(b) Contracts and subcontracts for the sale or exchange of tangible property used in the trade or business of the vendor, with respect to which depreciation is allowable under section 23 (1) of the Internal Revenue Code (not including stock in trade of the vendor or other property which would properly be included in the inventory of the vendor if on hand at the close of his fiscal year, or property held by the vendor primarily for sale in his trade or business).

NOTE: In addition to the foregoing the Secretary of Defense on June 14, 1948 exempted from the application of the Renegotiation Act of 1948 that portion of the Supplemental National Defense Appropriation Act of 1948, Public Law 547, 80th Congress, entitled "Department of the Army—Military Functions, Corps of Engineers, Engineer Service, Army."

(ii) *Limitation on exemption*. The exemption granted under subdivision (i) of this subparagraph extends only to contracts and subcontracts under which profits can be established with reasonable certainty when the contract or subcontract price is established. The words "when the contract or subcontract price

is established" in the preceding sentence of this subdivision are a qualification upon the scope of the exemption, and contemplate that the contract or subcontract price shall be established at the time the contract or subcontract is entered into. Accordingly, this exemption extends only to contracts and subcontracts under which the price is a fixed or determinable amount at the time the contract or subcontract is entered into, and does not apply to any contract or subcontract under which the price, at the time the contract or subcontract is entered into, is contingent upon a subsequent event or is thereafter to be determined by reference to a variable element (as, for example, the lessee's sales or profits).

(2) *Contracts and subcontracts with public utilities for*: (i) The delivery of electric power.

(ii) The delivery of gas.

(iii) The furnishing of water or steam or the removal of sewage; or

(iv) The furnishing of transportation by common carriers by railroad, motor vehicle, pipeline, air or water, when made at published rates or charges, fixed, approved or subject to regulation by a public regulatory body or Governmental agency, or at rates that are no higher than such published rates.

(v) The service of transmitting messages by telephone, telegraph, cable or radio or furnishing other communication services or communication facilities, when made at published rates or charges, fixed, approved or subject to regulation by a public regulatory body or Governmental agency or at rates that are no higher than such published rates.

(3) *Contracts for personal or professional services*. (i) *Exemption*. All contracts entered into pursuant to the authority of section 2 (c) (1), or section 2 (c) (4) of the Armed Services Procurement Act of 1947, Public Law 413, 80th Congress, or other statutory authority, when such contracts call for the performance of services, whether personal or professional, by the individual contractor in person under the supervision of the Government and which are paid for on a time basis.

(ii) *Limitation on exemption*. This exemption shall not apply to contracts which contemplate the performance thereof by a firm or organization, and subcontracts thereunder.

(4) *Supplies purchased for authorized resale*. All contracts subject to the Renegotiation Act of 1948 entered into in the fiscal years 1950 or 1951 pursuant to the authority of section 2 (c) (8) of the Armed Services Procurement Act of 1947, Public Law 413, 80th Congress, or which could have entered into pursuant to the authority of such section 2 (c) (8), (even though the procuring agency actually cites another authority such as section 2 (c) (1), 2 (c) (6) or 2 (c) (10) of the aforementioned act), and subcontracts thereunder.

(5) *Perishable subsistence supplies*. All contracts subject to the Renegotiation Act of 1948 entered into in the fiscal years 1950 and 1951 pursuant to the authority of section 2 (c) (9) of the Armed Services Procurement Act of 1947, Public Law 413, 80th Congress, or which

could have been entered into pursuant to the authority of such section 2 (c) (9), (even though the procuring agency actually cites another authority such as section 2 (c) (1), 2 (c) (6) or 2 (c) (10) of the aforementioned act), and subcontracts thereunder.

(6) *Blind-made products*. All contracts made subject to the Renegotiation Act of 1948 entered into in the fiscal years 1950 or 1951, for procurement of supplies at prices determined by the Committee on Purchases of Blind-made Products, pursuant to the provisions of section 46-48, inclusive of Title 41 of the United States Code (52 Stat. 1196) from any nonprofit making agency for the blind organized under the laws of the United States or of any State and subcontracts thereunder.

(7) *Subcontracts for items customarily purchased for stock*. All subcontracts subject to the Renegotiation Act of 1948 entered into on or after January 1, 1949 which are for items customarily purchased for stock in the normal course of the purchaser's business, except when such items are specially purchased for use in performing a contract or higher tier subcontract subject to the Renegotiation Act of 1948.

(8) *Collateral items (with respect to the period January 1, 1951, through June 30, 1951)*—(i) *Exemption*. All subcontracts for:

(a) The sale, furnishing, or installation, of machinery used in the processing of other machinery to be used in the processing of an end product or of an article incorporated therein.

(b) The sale, furnishing, or installation of component parts of, or subassemblies for, machinery included in (a) of this subdivision.

(c) The performance of services directly required for the performance of subcontracts included in (a) and (b) of this subdivision.

As used herein the phrase "used in processing" has the same meaning as set forth in § 423.333 of this title (Military Renegotiation Regulations).

(ii) *Limitations on exemption*. The termination date of this exemption is June 30, 1951.

This exemption does not apply to subcontracts where the purchaser of such machinery has acquired it for the account of the Government. As used herein the phrase "acquired it for the account of the Government" means acquired pursuant to an arrangement between the Government and the purchaser of such machinery, whereby title to such machinery will, or may, at the option of the Government, vest in the Government.

(iii) *Comment*. The scope of the collateral items exemption as it applied prior to January 1, 1951, excluded from renegotiation all subcontracts for items which did not become a part of the end product or of a component incorporated therein. This exemption excludes from renegotiation a narrower group of subcontracts. The termination of the exemption which applied prior to January 1, 1951, has the effect of bringing back within the scope of renegotiation all subcontracts for items of machinery, equipment, and materials which operate directly on an end product or of an

article incorporated therein by chemical, physical, or mechanical methods, such as shaping, cutting, constructing, combining, refining, assembling, testing, or inspecting. Furthermore, all subcontracts for components of such machinery, equipment, or materials will likewise be subject to renegotiation. For example, if an aircraft manufacturer buys a machine on or after January 1, 1951, for use in performing a renegotiable contract, the purchase of that machine will be a subcontract subject to renegotiation. Furthermore, purchases made by the manufacturer of the machine of components to be incorporated therein will likewise be subject to renegotiation if such purchases are made on or after January 1, 1951.

(e) The Military Renegotiation Regulations issued by the Military Renegotiation Policy and Review Board are the controlling regulations with respect to renegotiation matters. The following interpretations and opinions have been issued for the guidance of Contracting Officers:

(1) The Renegotiation Act of 1948 is applicable to contracts, and subcontracts thereunder, with either American or foreign contractors regardless of whether the procurement is effected or to be performed within or outside the continental United States, its territories and possessions.

(2) A second contract is renegotiable under the Renegotiation Act of 1948, all other factors being present, for procurement previously contracted for under a non-renegotiable contract which was in default and which had been terminated on behalf of the Government by reason thereof.

(3) The Renegotiation Act of 1948 is construed to apply to contracts made by the Department of the Army regardless of the fact that the funds which will be used to pay for the procurement, were appropriated for the use and benefit of a governmental agency other than the Department of the Army, Navy or Air Force.

(4) The Federal Prison Industries, Inc., is a governmental corporation of the United States. Consequently, purchases from such corporation of items listed in the Schedule of Products, issued by such corporation, are non-renegotiable in view of section 3 (d) of Public Law 547, 80th Congress, which incorporates by reference section 403 (1) (1) (A) of the Renegotiation Act of 1944. Likewise, any other purchase from a corrective institution would be non-renegotiable provided such corrective institution is a department, bureau, agency, or governmental corporation of the United States, or an agency of any State, Territory, possession or foreign government.

(5) Section 423.332-1 of this title (Military Renegotiation Regulations) states:

General. All contracts required to contain a Renegotiation Article are subject to the Renegotiation Act of 1948. The absence of a Renegotiation Article from any contract does not, however, preclude the application of the act if such contract is one required to contain an Article.

(6) Section 423.334-1 of this title (Military Renegotiation Regulations) states:

General. All subcontracts required to contain the Renegotiation Article are subject to the Renegotiation Act of 1948. The absence of the Renegotiation Article from any subcontract does not, however, preclude the application of the act if such subcontract is one required to contain the Article.

(7) Section 423.334-4 of this title (Military Renegotiation Regulations) states:

Patent licenses as subcontracts. Licenses or other agreements for the use of processes or inventions used in performing subject contracts and subcontracts are subcontracts subject to renegotiation unless exempted.

(f) Requests for exemption from the Renegotiation Act of 1948 of individual contracts to be entered into by the Army Establishment, or of subcontracts under any individual contract to be entered into by the Army Establishment, will be submitted to the Secretary through the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) in sextuplicate (including all inclosures thereto). As adequate justification for the granting of an exemption from the Renegotiation Act of 1948, as extended and amended, must be shown to exist, in submitting such requests for exemption the following information will be included:

(1) Contractor's name, address and plant location, with a description of the supplies or services to be furnished including the total price.

(2) A summary of all facts substantiating the request including supporting data and correspondence.

(3) A statement showing the need and anticipated use of the supplies or services.

(4) A statement as to the availability of a suitable, substitute contractor for the furnishing of such supplies or services, and the time element involved.

(5) A statement showing the contractor's attitude toward renegotiation in the event of his refusal to accept the contract containing the renegotiation clause, and the effect thereof on the procurement involved.

(6) A statement as to the required delivery schedule and its effect, if any, upon the urgency of this procurement.

(7) A statement showing the number of contractors contacted relative to this procurement and the prices offered by each; whether a price redetermination clause is to be inserted in the contract, together with any other facts showing why the proposed price is considered reasonable and that the interests of the Government are fully protected.

(8) A statement showing what effect, if any, the existence of the Renegotiation Act has exerted upon the reasonableness of the price offered.

§ 596.104-12 *Military security requirements (Security Requirements Check List).* (a) DD Form 254 will be prepared, in accordance with the instructions thereon, and be attached to all contracts and subcontracts classified Top Secret, Secret, Confidential, or Re-

stricted, and all contracts and subcontracts involving access to classified matter by a contractor or subcontractor. In addition to the initial completion of the form, necessary changes in security classification will be made as appropriate and will be reflected on the form when lower downgrading action is taken in accordance with applicable regulations. This form will not be considered a part of the contract but shall be used to implement the "Security Requirements Clause" as set forth in § 406.104-12 of this title, and any secrecy agreement which may be existent. (See § 596.579.)

(b) In effecting procurement outside the United States, its territories and possessions, this clause will be used with paragraph (c) of the clause deleted. Contracting Officers will exercise the utmost care in effecting this type procurement to avoid the compromise of classified data.

§ 596.104-13 *Domestic food or clothing.* In effecting procurement outside the United States, its territories and possessions, for any articles of food or clothing excepted from the prohibition of the annual appropriation acts, this clause will be deleted.

§ 596.105. *Additional clauses.* The clauses set forth in § 406.105 of this title will be inserted in fixed-price supply contracts in accordance with the instructions of each Procuring Activity where necessary or desirable to cover the subject matter contained in such clauses.

§ 596.105-5 *Liquidated damages—(a) Contract provision.* If a contract is to provide for liquidated damages, a provision will be inserted in accordance with § 406.105-5 of this title.

(b) *Accrual.* Where a contract provides for liquidated damages in the event of default, and a default occurs, liquidated damages accrue to the Government, in accordance with the terms of the contract.

(c) *Mitigation.* If there is a liquidated-damage provision in a contract for the purchase of ordinary supplies and default should occur, time should not be permitted to run indefinitely, the result of which would make the liquidated damages chargeable exceed the contract price of the supplies to be delivered. The law imposes the duty upon a party subjected to injury by the action of another to mitigate the damages which result from such wrongful action, and that must be as true where liquidated damages run as in the ordinary case of actual damages. Efforts must be made to procure supplies elsewhere if delivery is not forthcoming within a reasonable time after the default occurs. While the course to be followed must depend upon the facts in each case, the rule may be stated that damages to run must be conserved and, as promptly as possible, according to what may be the attitude of the contractor respecting delivery, administrative action should be taken to procure the supplies elsewhere.

(d) *Remission.* Whenever any contract includes a provision for liquidated damages for delay, the Comptroller General on the recommendation of the

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Secretary is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable. Recommendations submitted by a Contracting Officer to the Head of a Procuring Activity or to the Secretary will not be furnished the contractor.

§ 596.150 Department of the Army clauses. The following clauses will be inserted in fixed-price supply contracts when applicable and in accordance with the instructions set forth in §§ 596.150 through 596.150-4.

§ 596.150-1 Partial payments—(a) When payments are not to exceed 75 percent of the cost of the property. In those cases where it is contemplated that partial payments in an amount not to exceed 75 percent of the cost to the contractor of the material used by the contractor in manufacturing the supplies or doing the work called for by the contract will be made, the contract will contain the following clause:

PARTIAL PAYMENTS

Partial payments, which are hereby defined as payments prior to delivery, on work in progress for the Government under this contract, may be made upon the following terms and conditions.

(a) The Contracting Officer may, from time to time, authorize partial payments to the Contractor upon property acquired or produced by it for the performance of this contract: *Provided*, that such partial payments shall not exceed 75 percent of the cost to the Contractor of the property upon which payment is made, which cost shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer: *Provided further*, that in no event shall the total of unliquidated partial payments (see (c) below) and of unliquidated advance payments if any, made under this contract, exceed 80 percent of the total contract price of supplies still to be delivered.

(b) Upon the making of any partial payment under this contract, title to all parts, materials, inventories, work in process and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: *Provided*, that nothing herein shall deprive the Contractor of any further partial or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

(c) In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the partial payments theretofore made to the Contractor, under the authority herein contained.

(d) It is recognized that property (including, without limitation, completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things called for herein) title to which is or may hereafter become vested in the Government pursuant to this clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of notice of

termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer: *Provided*, That after receipt of notice of termination, any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the clause of this contract entitled Termination for Convenience of the Government and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of partial payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (d), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the Termination for Convenience of the Government of this contract and applicable laws and regulations. Upon liquidation of all partial payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which has not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor.

(e) The clause of this contract captioned "Liability for Government-Furnished Property" and any other provision of this contract defining liability for Government-Furnished Property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this clause. The provisions of this clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

(f) If this contract (as heretofore or hereafter supplemented or amended) contains provisions for Advance Payments, and in addition if at the time any partial payment is to be made to the Contractor under the provisions of this partial payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment, of such partial payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Clause, and shall thereafter be withdrawn only pursuant to such provisions.

(b) When payments are not to exceed 90 percent of direct labor and material costs. In those cases where it is contemplated that partial payments in an amount not to exceed 90 percent of the direct labor and material costs to the contractor will be made, the contract will contain the clause set forth in paragraph (a) of this section, except that in lieu of the words "75 percent of the cost," in subparagraph (a) of the clause, the words "90 percent of the direct labor and direct material costs" will be inserted.

§ 596.150-2 Advance Payments. Whenever advance payments have been authorized in accordance with Subpart E, Part 402 of this title and of this Proce-

dure, insert the contract clause appropriate for use in fixed-price supply contracts, as set forth in Subpart E, Part 402 of this title: *Provided*, That prior to the issuance and effective date of such clause, there will be inserted the contract clause authorized for use in the contract concerned at the time the advance payment is approved as provided in Subpart E, Part 402 of this title and this procedure.

§ 596.150-3 Plant protection. In those cases where the Contracting Officer deems it necessary to retain some control as to the plant protective devices in a particular plant, the contract will contain one of the following clauses:

PLANT PROTECTION

The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage.

PLANT PROTECTION

The Contractor shall maintain in and about his plant adequate plant protective devices and shall employ such watchmen, guards and other personnel as the Contracting Officer may deem necessary to prevent espionage, sabotage, and other malicious destruction or damage. If the Contracting Officer from time to time shall require the installation of plant protective devices or the employment of watchmen, guards or other personnel, or both, in addition to those deemed necessary by him on the date the Contractor shall commence performance of this contract, the cost of any such devices installed or the pay of any such personnel employed, or both, at the written request and upon the written authorization of the Contracting Officer, shall be reimbursed to the Contractor upon submission of vouchers approved by the Contracting Officer, provided that no reimbursement of the cost of any such installation or pay of any such personnel, or both, shall be made in excess of the cost thereof, as estimated in advance and approved in writing by the Contracting Officer.¹

§ 596.150-4 Rental of gas cylinders. Every contract for the rental of gas cylinders will contain a clause similar to one of the following:

RENTAL OF GAS CYLINDERS (INDIVIDUAL BASIS)

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylinders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged and the United States agrees to pay to the Contractor a rental at the rate of \$----- per cylinder per day for the use of cylinders not returned to the Contractor.

RENTAL OF GAS CYLINDERS

(Quantity basis)

Cylinders shall remain the property of the Contractor and will be loaned, without charge, to the Government for a period of 30 days after the date of shipment of cylin-

¹ If desired an additional proviso may be added, reading substantially as follows:

Provided further, That no reimbursement of the cost of any such installation or pay of any such personnel is being made to the Contractor by other means.

ders from the Contractor's plant. Beginning with the first day after the expiration of the 30-day free loan period to and including the day the cylinders are released to the transportation company for return to the Contractor, there will be charged and the United States agrees to pay the Contractor a rental at the rate of \$_____ per cylinder per day, computed on a quantity basis, as indicated below, for the use of cylinders not returned to the contractor. This rental charge will be computed separately for oxygen and acetylene cylinders and for each point of delivery named in the contract. A credit of 30 cylinder days will accrue for each cylinder shipped. A debit of one cylinder day will accrue for each cylinder for each day held beginning with the day after date of shipment from Contractor's plant to and including the day the cylinder is released to the transportation company for return to the Contractor. At the end of the contract period, in the event the total number of debits exceeds the total number of credits, rental will be charged for the difference. If the total number of credits equals or exceeds the total number of debits, no charge will be made for the use of the cylinders.

All cylinders not returned to the Contractor on or before the expiration of a 90-day rental period or lost or damaged beyond repair while in the possession of the United States Government shall be paid for by the United States to the Contractor at a replacement value of \$_____ for each oxygen cylinder of 100 to 110 cubic feet capacity, \$_____ for each oxygen cylinder of 200 to 220 cubic feet capacity, \$_____ for each acetylene cylinder of 100 to 150 cubic feet capacity, and \$_____ for each acetylene cylinder of 250 to 300 cubic feet capacity.

Cylinders retained or lost and so paid for shall be considered the property of the United States. But if and when located they may, at the option of the Government, be returned to the Contractor, and, in such event, credit shall be allowed to the Government at the replacement value paid, less rental at the rate of \$_____ per day beginning at the expiration of the 30-day period as aforesaid to the date upon which cylinders are turned over to carrier for return to Contractor's plant.

§ 596.151 Price escalation clauses. Price escalation clauses (as distinguished from price redetermination clauses) may be inserted in contracts entered into after formal advertising or negotiation in accordance with the instructions set forth in this section. (See § 591.406 (b).)

§ 596.151-1 General price escalation clause. (a) The general price escalation clause set forth in §§ 596.151—596.151-4 is authorized for inclusion in fixed-price contracts, awarded as a result of either formal advertising or negotiation, for the procurement of all standard and "semi-standard" "off-the-shelf" items. "Semi-standard items" are those items which the contractor customarily offers for sale commercially, but which are being modified under this contract to meet Government specifications. This escalation clause is designed primarily for use in contracts for the purchase of items from other than "integrated steel producers," "operators of a steel foundry," and "producers of aluminum."

(1) **Standard "off-the-shelf" items.** This clause is authorized for use in any contract for the purchase of standard "off-the-shelf" items, without limitation as to the total contract amount.

(2) **Semi-standard items.** This clause is authorized for use in contracts for the procurement of "semi-standard items"

where the total contract amount is not less than \$1,000, nor more than \$100,000, and

(i) The contract specifically designates which item or items (being modified from standard under the terms of the contract) are to be used as a basis for any increase or decrease in contract price.

(ii) The contract provides that such percentage of increase or decrease, as agreed to by the Contractor and the Contracting Officer, shall be applied to the unit prices of all of the items under the contract.

(b) Suitable price redetermination clause, in lieu of this escalation clause will be used in all instances wherein it is desired to redetermine an estimated price based upon all or any of the following, except subparagraph (3) and/or (4) of this paragraph alone:

- (1) Quantities of materials.
- (2) Hours of labor.
- (3) Cost of material.
- (4) Rates of labor.
- (5) Overheads.
- (6) General and administrative expense.
- (7) Other direct and indirect costs.

Determination of subparagraph (3) and/or (4) of this paragraph alone may be made through the use of this escalation clause.

(c) When it is planned to include this clause in contracts to be awarded as a result of formal advertising, the invitations for bids will clearly so state, and will further state that all bids will be evaluated after applying the maximum amount of possible escalation.

PRICE ESCALATION

(General)

(a) The Contractor represents and warrants that the prices set forth in this contract do not include any contingency allowance to cover the possibility of increased costs of performance resulting from increases in either (1) the Contractor's rates of pay for labor employed by him; or (2) the prices which the Contractor is required to pay for material. The Contractor further represents and warrants that the net price or prices paid or to be paid by the Government under this contract do not and shall not exceed those paid by any other purchaser or consignee for like quantities of the same or similar supplies. The Contractor also agrees to give the Government any and all discount benefits extended by it to any other purchaser or consignee purchasing or handling like quantities of the same or similar supplies covered by this contract.

(b) In the event that, at any time during the performance of this contract, the Contractor shall pay rates of pay for direct labor employed by him or prices for direct material in excess of or less than those current as of the date of this contract, provided that any such change would result in an increase or decrease of at least three percent (3%) of the then aggregate contract price of the uncompleted units of the contract, then in either such event the unit prices set forth in this contract may be revised upward or downward in accordance with the provisions of paragraph (c) hereof, with respect to the units completed subsequent to the effective date of any such increase or decrease by an amount equivalent to the increase or decrease in cost per uncompleted unit occasioned by the increase or decrease in direct labor wage rates or in prices for material or both.

(c) Not later than twenty (20) days after the effective date of any increase or decrease as referred to in paragraph (b) hereof, the Contractor shall notify the Contracting Officer of any such increase or decrease, and with such notification shall submit a supporting cost break-down. Such cost breakdown will—

(1) Be prepared in accordance with recognized commercial accounting principles.

(2) Indicate changes in estimated direct labor and direct material costs resulting from any increase or decrease as referred to in paragraph (b) hereof.

(3) Be signed by a responsible official of the Contractor.

Upon the basis of such notification and cost break-down, and such other data may be available to the Contracting Officer or as shall be furnished to him upon request to the Contractor, a price adjustment to reflect the increase or decrease in costs as referred to in paragraph (b) hereof shall be determined by mutual agreement between the Contractor and the Contracting Officer, and shall be set forth in an amendment to this contract. In the event that the Contractor fails to give notice of any decrease as required herein, a downward adjustment shall be later effected with respect to units completed subsequent to the effective date of any such decrease.

(d) Price adjustment may be agreed upon, at any time and from time to time during the performance of this contract, in accordance with the provisions of this clause. In no event, however, shall any price adjustments be made:

(1) For increased or decreased costs resulting from an increase or decrease as related to the original contract estimates, in number of hours of labor, in amounts of material purchased, or in overhead charges; or

(2) Which would increase or decrease the estimated dollar amount of profit per unit originally included in the contract price.

(e) The increase or accumulated increases in unit prices made under this clause shall not exceed ten percent (10%) of the original contract unit price.

(f) Pending a determination of any price adjustment under this clause the Contractor shall continue deliveries hereunder. Failure of the parties to agree upon a price adjustment pursuant to the provisions of this clause shall be deemed to be a dispute as to a question of fact within the meaning of the clause of this contract entitled "Disputes."

§ 596.151-2 Price escalation clauses for standard steel items. The price escalation clauses set forth below are authorized for inclusion in fixed-price contracts for standard steel items, under the following circumstances:

(a) Items being procured are made wholly or in the major part of steel.

(b) Contractor is an "integrated steel producer" or an "operator of a steel foundry."

(c) That, when it is planned to include the appropriate clause in contracts to be awarded as a result of formal advertising, the invitations for bids will clearly so state, and will further state that all bids will be evaluated after applying the maximum amount of possible escalation.

PRICE ESCALATION

(Formal advertising)

(a) The Contractor hereby warrants that the unit prices stated herein on the date set for opening of bids are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in

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any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, after the date set for opening of bids and during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent (10%) of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price and no increase shall be granted unless the Contractor's applicable established price has increased subsequent to the date set for opening of bids.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's said request and the contract shall be modified accordingly, provided, that such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

PRICE ESCALATION

(Negotiated purchases)

(a) The Contractor hereby warrants that the unit prices stated herein at the date

hereof are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) For deliveries pursuant to the terms of this contract, the aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's said request and the contract shall be modified accordingly, provided, that such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

§ 596.151-3 Price Escalation Clause for aluminum. The escalation clause set forth below is authorized for inclusion in fixed-price contracts for aluminum, entered into after formal adver-

tising or by negotiation, under the following circumstances:

(a) Contractor is a producer of aluminum.

(b) Items being procured are made wholly or in the major part of aluminum.

(c) That, when it is planned to include this clause in contracts to be awarded as a result of formal advertising the invitations for bids will clearly so state, and will further state that all bids will be evaluated after applying the maximum amount of possible escalation.

PRICE ESCALATION

(Aluminum)

(a) The Contractor hereby warrants that the unit prices stated herein on the date set for opening of bids or offers are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any of such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor, and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation, except that the Contractor may make delivery of all or any of the supplies which a duly authorized officer of the company shall certify were completed or in the process of manufacture at the time of receipt of notice of such cancellation, and the Government shall pay for all supplies so delivered at the applicable unit price contained in Contractor's said request and the contract shall be modified accordingly, provided, that such certification is made within 10 days after receipt of notice of such cancellation and such requested increase satisfies all of the conditions and does not exceed the limitations of paragraph (b). Supplies shall be deemed to be in the process of manufacture when the steel therefor is in any state of processing after the beginning of the furnace melt.

(d) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(f) During the period prior to such cancellation, the Contractor shall continue deliveries according to the terms of the contract and shall be paid therefor at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the

conditions and do not exceed the limitations of paragraph (b).

(e) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and prior to the effective date of any subsequent increase or decrease in the Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided, such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

§ 596.151-4 Price escalation clause for open-end contracts and indefinite quantity contracts.

(a) The price escalation clause set forth below is authorized for inclusion in open-end and indefinite quantity contracts, entered into after formal advertising or by negotiation, under the following circumstances:

(1) That items being procured are standard "off-the-shelf" items.

(2) That, when it is planned to include this clause in contracts to be awarded as a result of formal advertising the invitations for bids will clearly so state and will further state that all bids will be evaluated after applying the maximum amount of possible escalation.

PRICE ESCALATION

(Open-end or indefinite quantity contract)

(a) The Contractor hereby warrants that the unit prices stated herein at the date hereof are not in excess of the Contractor's applicable established prices for like quantities of the supplies covered by this contract. The Contractor shall notify the Contracting Officer of each decrease in any such established prices and each applicable contract unit price shall be decreased accordingly. Any decrease in a unit price shall become effective concurrently with the effective date of each applicable decrease in Contractor's established price and the contract shall be amended accordingly.

(b) The Contractor may at any time, or from time to time, during the performance of the contract request in writing an upward adjustment in any of the contract unit prices to be effective as from a date to be specified by the Contractor, subject to the following conditions:

(1) No unit price as adjusted shall exceed the Contractor's applicable established price.

(2) The aggregate of the increases in any unit price made under this paragraph shall not exceed 10 percent of the original applicable contract unit price.

(3) No adjusted unit price shall be effective earlier than the effective date of any increase in the applicable established price.

(c) In the event the requested adjustment in any contract unit price is acceptable to the Contracting Officer, he shall not later than 20 days after the date of receipt by him of the request so notify the Contractor and the contract shall be modified accordingly. If any such requested adjustment in a unit price is not acceptable to the Contracting Officer, he shall so notify the Contractor in writing within 20 days from the date of receipt by him of the Contractor's said notice; and unless an agreement can be reached as to the amount of increase, the Government may cancel without liability to either party the Contractor's right to proceed with performance of the portion of the contract which is undelivered at the time of such cancellation.

(d) If notice of cancellation is not sent to the Contractor within 30 days after receipt by the Contracting Officer of the Contractor's request, supplies delivered subsequent to the date specified in such request, and

prior to the effective date of any subsequent increase or decrease in Contractor's applicable established prices, shall be paid for at the applicable increased unit prices so requested, provided such requested increases satisfy all of the conditions and do not exceed the limitations of paragraph (b).

(e) The Contractor also agrees to give the Government any and all discount benefits extended to any company, agency, organization, or individual purchasing or handling like quantities of the supplies covered by this contract.

(b) Paragraphs (d) and (e) of the above clause are optional. Paragraph (d) of the clause clearly provides certain benefits to the Contractor and should not be included unless requested by the Contractor and it is deemed necessary to complete the procurement. Paragraph (e) is a so-called "Preferred Customer" clause and obviously does benefit the Government. Paragraph (e) should be included in all cases; however, authority is granted to delete it in those instances wherein the objections of the Contractor would preclude the possibility of effecting the necessary procurement.

§ 596.152 Price redetermination clauses. Price redetermination clauses, as authorized in §§ 596.152 through 596.152-3 or by the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, may be included in negotiated fixed-price contracts in accordance with the requirements of §§ 402.401, 402.403, 592.401 and 592.403 of this title.

§ 593.152-1 Form II-B price redetermination clause—(a) Nature and effect. The Form II-B, price redetermination clause, appearing in paragraph (d) of this section, provides for a negotiated upward or downward redetermination of the prices upon completion of delivery of a specified percentage of the principal items called for by the contract, without a demand by either party. Thereafter there may be upward or downward revision of the price upon written demand of either party, subject to specified limitations on the frequency of the demands. Any redetermination made pursuant to a demand after the initial period has a prospective effect only.

(b) Conditions for use. The Form II-B price redetermination clause should be used in instances when the following conditions exist:

(1) The contract is a fixed-price contract for supplies, the quantity being procured is large, no accurate forecast of the cost of production is feasible, and the contract covers a period of at least six months.

(2) Effective competition is not available to indicate reasonableness of price.

(3) There are no data available to indicate reasonableness of price.

(4) The price (i) is negotiated upon the express understanding that the particular price redetermination clause is to be included in the contract and (ii) is a close price containing substantially no charge or allowance for contingencies.

(5) The Contracting Officer is satisfied that the contractor employs methods of estimating its costs which accurately reflect current shop and engineering experience and proper quan-

tity and price allowances for material, labor, machine utilization, and other cost elements.

(6) The Contracting Officer is satisfied that the contractor has a cost accounting system of sufficient accuracy and reliability to show the cost information required by the clause at the time or times provided therein.

(c) *Rules for administration.* In negotiating a price adjustment under the Form II-B, price redetermination clause, the Contracting Officer will adhere to the following rules, in addition to the audit requirements set forth in § 590.607.

(1) The negotiations to redetermine prices should ordinarily take into account all changes in specifications which have been made up to the time of the negotiations.

(2) Negotiations to redetermine prices will be conducted upon substantially the same basis as the original negotiation of a price when like information on costs and estimates is available. The Contracting Officer ordinarily should not give consideration to an increase in price beyond the amount estimated to be the excess of (i) any increases in cost beyond the contractor's control over (ii) any offsetting reductions in the contractor's costs. However, this rule should not be applied to deprive a contractor of a reasonable reward in the form of an increased estimated profit margin for especially efficient and economical production.

(3) The Contracting Officer should take into consideration the fact that increases in certain costs may be offset by decreases in others. The Contracting Officer should also recognize that increases in wages and in the prices of materials will not necessarily increase, immediately or proportionately, the cost of items to be delivered by the contractor. For example, some of the labor on work in process at the time of a wage increase may have been performed while lower rates of wages were in effect. Again, materials included in work in process may have been bought by the contractor before the effective date of a price increase. Similarly, the contractor may have an inventory on hand or materials on order at prices which do not reflect the current increases therein. Also, there may be offsetting savings not attributable to the efficiency of the contractor.

(4) The contractor's estimate of future costs will be considered in the light of all available data, including shop, engineering, accounting and other relevant information, which will help to check the accuracy of the estimate. When any component or components of the estimate are in question, the Contracting Officer should inquire into the physical facts, e. g., the number of men actually engaged in a particular operation or process, the quantity of material actually used, etc. Expense and overhead allocation are based upon an estimated amount of expense spread over an anticipated volume to be obtained. Check of the actual rate of expenditures and the actual volume being obtained should be made so that the rates used may be founded on up-to-date forecasts.

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The aggregate of those charges included in the prices of contracts entered into within the current period should be considered in order to avoid excessive prices through over-absorption of such charges.

(5) In addition to consideration of the contractor's cost experience under the contract and its estimates of future production costs, the contracting officer should make use of comparative prices, comparative costs and the trends of such prices and costs. If, since the making of the contract, prices have become competitive, particular weight shall be given to comparative prices, to the end that the effect of competitive forces may be fully realized for the benefit of the Government.

(6) The Contracting Officer should make such use and verification of the estimate and the supporting cost data submitted by the contractor as he would make with respect to similar data upon the negotiation of a price under a new contract.

(7) The negotiations will be promptly instituted and concluded in strict accordance with the provisions of the clause. Every effort will be made to come to an agreement as to revised price or prices. The Disputes clause will be invoked only as a last resort.

(8) Upon the conclusion of each negotiation for price revision, the revised price or prices will be evidenced by a supplemental agreement. The supplemental agreement should clearly indicate what costs, if any, of a non-recurrent nature have been recognized as having been paid for in prices for the preceding period or periods, so as to avoid the possibility of a second payment therefor in the event of termination at the option of the Government.

(9) Wherever a contract containing the Form II-B price redetermination clause is modified by change order or supplemental agreement, so as to affect the rate of deliveries or quantities of items called for, the Contracting Officers will take care to deal with and cover explicitly any modification in the operation of the price redetermination clause which he considers are made necessary by the modification of rates of deliveries or quantities.

(10) Proper administration of the Form II-B clause requires that the Contracting Officer make regular periodic reviews of the contract price to ascertain whether or not a demand should be served. No demand should be made by the Contracting Officer, and the contractor should be discouraged from making such demand, unless a sound basis exists for believing that a redetermination of price is necessary to protect the interest of the Government or the contractor. The need for such a demand may be indicated by factors such as the following:

- (i) Comparative prices.
- (ii) Movements or trends in such prices.
- (iii) Movements or trends in the prices asked by other contractors for the same or similar items.
- (iv) Information supplied by the contractor in the ordinary course of business.

(v) Changes in market prices of materials or components.

(vi) Changes in subcontract prices.

(vii) Changes in the contractor's prices under other Government contracts.

(11) The first revised forward price under the Form II-B clause and prices negotiated pursuant to a demand under the clause should be based on projections extending over the remaining life of the contract and should not take into account possible increases in costs.

(d) *Contract clause.* The following Form II-B price redetermination clause may be used in negotiated fixed-price contracts in accordance with the instructions set forth in the preceding paragraphs and if approved for use in accordance with § 592.403:

PRICE REDETERMINATION

(Form II-B)

(a) The prices stated herein may be increased or decreased in accordance with this clause. In no event shall the revised price exceed \$-----.

(b) *Times for negotiation.*

(1) Upon completion of delivery of ----- percent of the (here specify the principal items to be furnished under the contract) to be furnished under this contract or upon expenditure of (here specify the percentage of the total contract amount), whichever shall occur last, the parties shall negotiate to revise the prices of all items theretofore and thereafter to be delivered. Within not to exceed thirty (30) days after the completion of delivery or expenditure of funds referred to above, the Contractor shall furnish to the Contracting Officer the statements and data referred to in paragraph (c) of this clause. At any time and from time to time after the completion of delivery or expenditure of funds referred to above, subject to the limitations specified in this clause, either the Government or the Contractor may deliver to the other a written demand that the parties negotiate to adjust the prices under this contract. No demand shall be made prior to 90 days after completion of delivery or expenditure of funds referred to above, and thereafter neither party shall make a demand having an effective date within 90 days of the effective date of any prior demand. Each demand shall specify a date (identical with or subsequent to the date of the delivery of the demand) as of which the revised prices shall be effective as to the deliveries made thereon and thereafter. This date is hereinafter referred to as "the effective date of the price redetermination." For the purposes of the first negotiation contemplated by this paragraph, the date of execution of this contract shall be deemed to be the effective date of the price redetermination. Any demand under this clause, if made by the Contractor, shall state briefly the ground or grounds therefor and shall be accompanied by the statements and data referred to in paragraph (c) of this clause. If the demand is made by the Government, such statements and data will be furnished by the Contractor within 30 days of the delivery of the demand.

(2) In the event all remaining work under this contract, as it may from time to time be amended, shall be terminated pursuant to the clause of this contract entitled "Termination for Convenience of the Government", no demand shall then or thereafter be made and any demand the effective date of which is less than 30 days before the effective date of such termination shall be void and of no effect.

(c) *Submission of data.* At the time or each of the times specified or provided for in paragraph (b) of this clause the Con-

tractor shall submit (i) a new estimate and breakdown of the unit cost and the proposed prices of the items remaining under this contract after the effective date of the price redetermination, itemized so far as is practicable in the manner prescribed by WD Form 105; (ii) an explanation of the differences between the original (or last preceding) estimate and the new estimate; (iii) such relevant shop and engineering data, cost records, overhead absorption reports and accounting statements as may be of assistance in determining the accuracy and reliability of the new estimate; (iv) a statement of experienced costs of production hereunder to the extent that they are available at the time or times of the negotiation of the revision of prices hereunder; and (v) any other relevant data usually furnished in the case of negotiation of prices under a new contract. The Government may make such examination of the Contractor's accounts, records and books as the Contracting Officer may require and may make such audit thereof as the Contracting Officer may deem necessary.

(d) *Negotiations.* (1) Upon the filing of the statements and data required by paragraph (c) of this clause, the Contractor and the Contracting Officer will negotiate promptly in good faith to agree upon prices for items to be delivered on and after the effective date of the price redetermination. Negotiations for price redetermination under this clause shall be conducted on the same basis, employing the same types of data (including, without limitations, comparative prices, comparative costs, and trends thereof) as in the negotiation of prices under a new contract.

(2) After each negotiation the agreement reached will be evidenced by a supplemental agreement stating the redetermined prices to be effective with respect to deliveries on and after the effective date of the price redetermination (or such other later date as the parties may fix in such supplemental agreement).

(e) *Disagreements.* If within 30 days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to redetermined prices (which term, for the purpose of this clause, shall include direct costs, indirect costs and profit), the failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes," and the prices so fixed shall remain in effect for the balance of the contract notwithstanding any other provision of this clause.

(f) *Payments.* Until new prices shall become effective in accordance with this clause, the prices in force at the effective date of the price redetermination shall be paid upon all deliveries, subject to appropriate later redetermination made pursuant to paragraph (d) or (e) or (g) (2) (B) of this clause.

(g) *Termination provisions.* For any of the purposes of the clause of this contract entitled "Termination for Convenience of the Government" (including, without limitation, the computation of "the total contract price" and "the contract price of work not terminated"), the contract price of delivered articles shall be deemed to be,

(1) For all items delivered prior to the effective date of the price redetermination, the contract price (giving effect to any prior revisions under this clause) applicable to each such item.

(2) For all items delivered on or after the effective date of the price redetermination.

(A) The contract price as revised in accordance with this clause if such revision shall have been agreed upon.

(B) If such revision shall not have been agreed upon, then such estimated prices as the Contractor and the Contracting Officer may agree upon as reasonable under all the circumstances and in the absence of such agreement such reasonable prices as may be determined in accordance with the clause of this contract entitled "Disputes."

(h) *Termination during the initial period.* In the event that this contract is terminated pursuant to the clause of this contract entitled "Termination for Convenience of the Government," or the Contractor's right to deliver is terminated pursuant to the clause of this contract entitled "Default," so that the last delivery under the contract as terminated is made prior to the completion of the initial period as specified in paragraph (b) of this clause, the Contractor within _____ days after such last delivery shall furnish the data required by paragraph (c) of this clause and thereupon the parties shall negotiate in good faith to agree upon revised prices under this contract. The agreement reached shall be evidenced by a supplemental agreement to this contract stating the revised prices under the contract. Any disagreement as to the revised prices will be disposed of as a question of fact in accordance with the clause of this contract entitled "Disputes." The following is authorized as an optional paragraph (e) in the Form II-B price redetermination clause:

(e) *Disagreements.* (1) If within 30 days after the date on which the statements and data are required pursuant to paragraph (b) of this clause to be filed (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to redetermined prices (which term, for the purpose of this clause, shall include direct costs, indirect costs and profit), the Contractor, if he has substantially complied with the requirements of this clause as to the furnishing of statements and data, may give written notice to the Contracting Officer requiring the Government to pay the prices set forth in such notice from the time at which the price redetermination was to be effective under the provisions of this clause.

(2) If the Contracting Officer and the Contractor fail to agree, the Contracting Officer within 30 days after the delivery of the Contractor's notice may serve upon the Contractor a written election by which the Government agrees to pay to the Contractor fair and just compensation from the time at which such price redetermination was to be effective under the provisions of this clause. The written election shall specify the amount which the Contracting Officer deems to be fair and just compensation. If no written election is served upon the Contractor, the prices set forth in the Contractor's notice shall be incorporated in an appropriate supplemental agreement. If a written election is served upon the Contractor as above provided, the contract shall continue in effect as modified by such written election and the Contractor (a) shall be paid currently the amount specified by the Contracting Officer in such written election for all deliveries affected thereby and (b) may recover from the United States, by suit brought within six months after the delivery of such written election or after the completion of deliveries under this contract, whichever shall last occur, the amount, if any, by which such fair and just compensation exceeds the amount so specified.

(3) If the Contracting Officer and the Contractor fail to agree and no notice has been given by the Contractor as contemplated in paragraph (e) (1) of this clause, the Contractor shall be entitled to receive, from the time at which such price redetermination was to be effective under the provisions of this clause, fair and just compensation the amount which shall be determined as a question of fact pursuant to the clause of this contract entitled "Disputes."

§ 596.152-2 Form III price redetermination clause.—(a) Nature and effect. The Form III price redetermination clause provides for retroactive pricing by mutual agreement. It is designed primarily for use in contracts of \$100,000 or less for experimental or developmental items or services. This clause, however, should also be used in contracts for the procurement of any item or service, when it is not possible to determine reasonableness of price at the time of negotiation. By its terms the Contracting Officer is empowered, after completion or termination of the contract, to demand that the parties negotiate to reduce the entire contract price. The redetermination of price effected thereunder is wholly retroactive.

(b) *Conditions for use.* The Form III clause should be used in instances when the following conditions exist:

(1) The amount of the negotiated contract is \$100,000 or less.

(2) There are no data available to indicate reasonableness of price.

(3) Contractor's estimate is believed to contain substantial allowance for contingencies. (It will not be assumed that a Contractor who agrees to inclusion of this price redetermination clause is assuming appreciable risk, unless it can be determined that the price offered by him does not include contingency provisions.)

(4) The Contractor's cost accounting system is sufficient to show the costs under the contract.

(5) The price initially fixed in the contract bears a reasonable relationship to the expected final price thereunder.

(c) *Rules for administration.* (1) If the production cost figures indicate that the price was high, the Contracting Officer will make the demand contemplated by the clause and will proceed promptly with and conclude the redetermination of the price in accordance with the clause.

(2) The Contracting Officer should make such use and verification of the cost data as he would make with respect to similar data upon the negotiation of a price under a new contract. The verification may include an examination and audit of the Contractor's books and records.

(3) The profit to be allowed under this contract upon redetermination of price shall be subject to negotiation.

(4) The redetermined price will be evidenced by a supplemental agreement making adequate provision to secure to the Government the benefit of the reduction.

(d) *Contract clause.* The following Form III price redetermination clause may be used in accordance with the instructions set forth in the preceding paragraphs and if approved for use in accordance with § 592.403:

PRICE REDETERMINATION

(Form III)

(a) Within sixty days after the completion or termination of this contract, the Contractor will submit to the Contracting Officer a detailed statement of the costs of performing this contract. Upon the written demand of the Contracting Officer, made at any time within thirty days after the submission of such statement, the Contractor

will negotiate to reduce the contract price to an amount representing fair and reasonable compensation for the performance of the contract. In such negotiations the efficiency of the Contractor in production, buying and management will be given due weight.

(b) The Contractor will furnish to the Contracting Officer such other statements of actual costs of production and such other financial statements, at such times and in such form and detail, as the Contracting Officer may prescribe, and will permit such audits and examination of its books, records and accounts as the Contracting Officer may request.

(c) If within thirty (30) days after the making of such demand (or such further period as may be fixed by written agreement) the Contracting Officer and the Contractor fail to agree to a redetermined price (which term, for the purpose of this clause, shall include direct costs, indirect costs and profits), the failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(d) The Government shall retain from amounts otherwise due to the Contractor, or the Contractor shall repay to the Government if paid to him, any amount by which the contract price is found as a result of the application of this clause to exceed a fair and reasonable price, as the Contracting Officer may direct.

§ 596.152-3 Form IV price redetermination clause—(a) Nature and effect. The Form IV price redetermination clause provides for retroactive pricing with a limited upward revision. This clause, providing for upward or downward price revision, is authorized for use in negotiated contracts for supplies or services where the quantity being procured is moderate and the period of the contract does not cover an extended period of time. Under the clause a contract price is agreed upon (target price) which it is believed will tend to compel the Contractor to do as efficient a job as possible in the circumstances, and at the same time a maximum price is fixed as a ceiling (normally not to exceed 10 percent of target price) on any upward redetermination under the clause. The redetermination of price takes place after completion or termination of the contract and is wholly retroactive.

(b) *Conditions for use.* The Form IV clause should be used in instances when the following conditions exist:

(1) The contract is a negotiated fixed-price contract for supplies or services where the quantity being procured is moderate and the period of the contract does not cover an extended period of time.

(2) Effective competition is not available to indicate reasonableness of price.

(3) There are no data available to indicate reasonableness of price.

(4) The price (i) is negotiated upon the express understanding that the particular price redetermination clause is to be included in the contract and (ii) is a close price containing substantially no charge or allowance for contingencies.

(5) The Contracting Officer is satisfied that the Contractor employs methods of estimating its cost which accurately reflect current shop and engineering experience and proper quantity and price allowances for material, labor, machine utilization, and other cost elements.

(6) The Contracting Officer is satisfied that the Contractor has a cost account-

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ing system of sufficient accuracy and reliability to show the cost information required by the clause at the time provided therein.

(c) *Rules for administration.* (1) The time limitations prescribed in the clause will be strictly followed.

(2) The Contracting Officer should make such use and verification of the cost data submitted by the Contractor as he would make with respect to similar data upon the negotiation of a price under a new contract. The verification may include the examination and audit of the Contractor's books and record.

(3) The negotiations under the clause may result in a redetermined price which is the same as, or higher or lower than, the contract price but never is a redetermined price in excess of the maximum price.

(4) The redetermined price will be evidenced by a supplemental agreement making adequate provision to secure to the Government the benefit of any price reduction negotiated, or for payment to the Contractor of any price increase, as the case may be.

(5) Profit to be paid on costs determined under the Form IV clause shall be subject to negotiation between the Contracting Officer and the Contractor, with due consideration given to the Contractor's efficiency in performing the contract. Failure to agree shall be deemed to be a disagreement as to a question of fact which shall be disposed of in accordance with the "Disputes" clause.

(d) *Contract clause.* The following Form IV price redetermination clause may be used in accordance with the instructions set forth in the preceding paragraphs and if approved for use in accordance with § 592.403:

PRICE REDETERMINATION

(Form IV)

(a) Because of the nature of the work called for by this contract and the great uncertainty as to the cost of performance hereunder, the parties agree that the contract price fixed in Clause _____ hereof may be increased or decreased in accordance with the provision of this clause.

(b) Within _____ [not exceeding 60] days after the completion or termination of this contract, the Contractor will file with the Contracting Officer a statement showing, in such form and detail as the Contracting Officer may prescribe, the Contractor's cost of producing the supplies or furnishing the services called for hereunder, together with such other information as may be pertinent in the negotiations for a redetermined price pursuant to this clause. Such statement of cost shall fairly reflect the normal operation of the Contractor's cost system. [First optional alternative to preceding sentence: The Contractor will establish and maintain records of the costs of performing this contract, as follows: * * *] [Second optional alternative: The Contractor will establish and maintain such records of the costs of performing this contract as the Contracting Officer may require in writing.] The Contracting Officer shall have the right at all reasonable times to make or cause to be made such examinations and audits of the Contractor's books, records and accounts as he may request.

(c) Upon the filing of the statement and other pertinent information required by paragraph (b) of this clause, the Contractor and the Contracting Officer will promptly

negotiate in good faith to agree upon a reasonable redetermined price for the entire contract which, upon the basis of such statement and other pertinent information, will constitute fair and just compensation to the Contractor for the performance of this contract. In determining the extent of any estimated allowance for profit to be taken into account in fixing such redetermined price, consideration will be given to the extent to which the Contractor has performed the contract with efficiency, economy, and ingenuity. In no event shall the redetermined price exceed the sum of \$_____. The redetermined price shall be evidenced by a supplemental agreement to this contract.

(d) If within _____ [not exceeding 90] days after the completion or termination of this contract, the parties shall fail to agree upon a redetermined price (which term, for the purpose of this clause, shall include direct costs, indirect costs and profit) in accordance with the provisions of this clause, the failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(e) In the event of a price increase the Government will pay or credit to the Contractor the amount by which the redetermined price shall exceed the contract price aforesaid. In the event of a decrease in price the Contractor will repay or credit the amount of such decrease to the Government in such manner as the Contracting Officer may direct.

(f) For any of the purposes of the clause of this contract entitled "Termination for Convenience of the Government" (including without limitation, computation of "the total contract price" and "the contract price of work not terminated"), the contract price agreed upon under paragraph (c) of this clause or determined under paragraph (d) of this clause, as the case may be.

NOTE: Subparts B, C, and D of this part will be issued subsequent to the publication of Subparts B, C, and D of Part 406 of this title.

SUBPART E—APPROVED CONTRACT FORMS
(STANDARD, DEFENSE, AND ARMY)

§ 596.500 *Scope of subpart.* This subpart lists and sets forth instructions for the use of approved contract forms, U. S. Standard, Department of Defense, and Department of the Army, which are prescribed for use within the Army Establishment.

§ 596.501 *Applicability.* Use of the contract forms prescribed herein is governed by Subchapter A, Chapter IV of this title, this Procedure, or such other special regulations or directives as may be indicated for the particular contract concerned.

§ 596.501-1 *Contract clauses—(a) General.* Many of the contract clauses to be included when these forms are used are not set forth in full in the forms themselves but are incorporated only by reference to sections of Subchapter A, Chapter IV of this title or particular sections of this Procedure.

(b) *Short forms.* Where, as in the case of some of the short contract forms, for example, DA AGO Form 383 and DD Form 327, the forms themselves contain shorter or modified versions of contract clauses, the use of the shorter or modified versions is authorized notwithstanding the provisions of the preceding parts of this Procedure.

§ 596.501-2 *Deviations.* Deviations in format, size, or contents, of approved contract forms are not permitted except as authorized herein unless prior written approval is obtained in each case from the Chief, Current Procurement Branch, Procurement Division, Office of the Assistant Chief of Staff, G-4.

§ 596.501-3 *Local reproduction.* (a) Those contract forms which bear DA AGO numbers in the 5000 series preceded by "R" (for example, DA AGO Form R-5628), are authorized to be reproduced locally by using agencies as they are not stocked by adjutant general publications depots. Contract forms which do not bear such an indicated "R-5000" number may not be reproduced locally unless specifically authorized by The Adjutant General.

(b) The fact that authority may have been previously secured from The Adjutant General for the local reproduction of certain approved contract forms or the procurement of reproducible masters of such forms, does not of itself authorize deviations in the format or size of such authorized contract forms. Separate authority for such deviations is also necessary as indicated in § 596.501-2. However, approval of The Adjutant General for the first procurement of a contract form reproducible master will suffice for continuous procurement of the same master until otherwise notified by The Adjutant General.

(c) In order to facilitate procurement in foreign countries, authority is granted to reproduce a translation of any form, for attachment to such form provided both the standard form and the foreign language translation contain a statement that in the event of a disagreement in the text of the English and foreign translations, the English text will govern.

§ 596.501-4 *Procuring activity contract forms.* Procuring Activity contract forms which have heretofore been approved for particular use by the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, and which are excluded from the applicability provisions of this subpart on account of their special nature, may continue to be used by the Procuring Activity concerned in accordance with its instructions if such forms are not inconsistent with the policies of Subchapter A, Chapter IV of this title or this Procedure. (See § 596.001.)

§ 596.501-5 *Statutory authority.* All negotiated contracts will be accomplished under §§ 402.201 and 592.201 of this title and will cite as authority section 2 (c) (1), Armed Services Procurement Act of 1947 (Pub. Law 413, 80th Cong.) and Presidential Proclamation 2914. The necessary changes will be made on printed forms, for example, DA AGO Form 383, DD Form 327, DA AGO Form 357, and any other printed contract form which cites as authority a category of the Armed Services Procurement Act of 1947 other than section 2 (c) (1).

§ 596.502 *List of forms.* The following is a list of the forms set forth in this subpart, grouped under descriptive headings:

Description	Section
Long form supply contract:	
Formal Advertising	596.503
Negotiated	596.504
Reserved	596.505 to 596.510
Short form supply contracts:	
Formal Advertising	596.511
Order & Voucher for Purchase of Supplies or Services Other Than Personal	596.512
Purchase Order	596.513
Government's Order and Contractor's Acceptance	596.514
Delivery Order	596.515
Reserved	596.516 to 596.530
Construction and related contracts:	
Construction Contract (Lump Sum)	596.531
Cost-Plus-A-Fixed-Fee Construction Contract	596.532
Cost-Plus-A-Fixed-Fee Architect-Engineer Contract with Optional Supervision	596.533
Lump Sum Contract for Architect-Engineer Services with Optional Supervision	596.534
Cost-Plus-A-Fixed-Fee Architect-Engineer-Construction Management Services Contract	596.535
Rental Agreement—Government-Owned Construction or Road Maintenance Equipment	596.536
Reserved	596.537 to 596.540
Letter contracts:	
Letter Contract (Cost Type)	596.541
Letter Contract (Fixed Price Type)	596.542
Reserved	596.543 to 596.560
Service contracts:	
Negotiated Utility Services Contract (Short Form)	596.561
Negotiated Utility Services Contract (Long Form)	596.562
Contract for Academic Instruction	596.563
Order Form to Contract for Academic Instruction	596.564
Contract for Movement of Household Goods and Effects	596.565
Master Lump Sum Ship Repair Contract	596.566
Stevedoring Contract	596.567
Reserved	596.568 to 596.570
Construction invitation and bid forms:	
Invitation for Bids	596.571
Bid	596.572
Plant and Equipment Schedule	596.573
Unit Price Schedule	596.574
Reserved	596.575 to 596.576
Other forms pertaining to contracts:	
Request for Proposal and Contractor's Proposal (Short Form)	596.577
Request for Proposal and Contractor's Proposal (Long Form)	596.578
Security Requirements Check List	596.579
Contractor's Statement of Contingent or Other Fees for Soliciting or Securing Contract	596.580
Abstract of Bids (Short Form)	596.581
Abstract of Bids (Long Form)	596.582
Abstract of Bids (Long Form)—Continuation Sheet	596.583
Reserved	596.584 to 596.590
Miscellaneous contracts:	
Contract of Sale of Property (Negotiated Sale)	596.591
Reserved	596.592 to 596.599

§ 596.502-1 Supply of certain forms—
(a) *Requisitions.* Supply of the forms listed below, printed complete as cut sheets on tissue 9# paper (except U. S. Standard Form 32 which is printed on 16# paper), permitting preparation of an original and nine carbons at a time, should be requisitioned through normal publications supply channels. Requisitions will be held to the absolute minimum stock necessary to meet current requirements to avoid waste upon change in format by the Department of the Army. Requisitions for cut sheet forms will contain nomenclature indicated below:

- (1) U. S. Standard Form 26, Nov 1949 edition—tissue 9#.
- (2) U. S. Standard Form 30, Nov 1949 edition—tissue 9#.
- (3) U. S. Standard Form 31, Nov 1949 edition—tissue 9#.
- (4) U. S. Standard Form 33, Nov 1949 edition—tissue 9#.
- (5) U. S. Standard Form 36, Nov 1949 edition—tissue 9#.

- (6) U. S. Standard Form 1036, 18 Sep 1950 edition—tissue 9#.
- (7) U. S. Standard Form 32, Nov 1949 edition—16#.
- (8) DD Form 351, 1 Jun 50 edition—tissue 9#.
- (9) DD Form 351-1, 1 Jun 50 edition—tissue 9#.
- (10) DD Form 351-2, 1 Jun 50 edition—tissue 9#.
- (11) WD Form 18, 1 Apr 1946 edition, with reverse side blank—tissue 9#.
- (12) WD Form 47, 1 Apr 1946 edition, with reverse side blank—tissue 9#.

(b) *Reproducible masters.* (1) Cut sheet forms indicated in paragraph (a) of this section will be used when 10 copies or less, including original, are required or when the volume of contracts does not justify the use of more expensive reproducible masters and the operation of reproduction equipment. When more than 10 copies, including original, of the forms are required or the volume of contracts justifies such action, the use of reproducible masters (heliograph, stencil, or offset) to produce multiple copies

of U. S. Standard Forms 30, 31, 33, and 36, DD Forms 351, 351-1 and 351-2, and WD Forms 18 and 47, is authorized.

(2) Upon specific prior approval of The Adjutant General, reproducible masters will be procured and stocked locally. See § 596.501-3 (b). The Contracting Officer at installations authorized to procure reproducible masters will be responsible for ensuring that such masters do not deviate from the approved format or from an authorized deviation under § 596.501-2, and that the quantity procured is held to a minimum in order to avoid waste upon change in format by the Department of the Army.

(c) *Preprinted backs.* The Terms and Conditions of the Invitation for Bids which appear as the back of U. S. Standard Forms 30 and 33 are identical and have been printed as one standard back. This standard back will be used as run off paper in reproducing multiple copies of U. S. Standard Forms 30 and 33 from hectograph, stencil, or offset reproducible masters. Supplies of the standard backs are available from adjutant general publications depots. Requisitions will contain the following nomenclature: Reverse of U. S. Standard Forms 30 and 33, Jan 50 edition, Universal 16#.

§ 596.503 Supply Contract; Formal Advertising (Long Form) (U. S. Standard Forms 26, 30, 31, and 32). (a) This form of contract consists of U. S. Standard Form 26 (Award), U. S. Standard Form 30 (Invitation and Bid), U. S. Standard Form 31 (Schedule), and U. S. Standard Form 32 (General Provisions). U. S. Standard Form 36 (Continuation Sheet) will be used to provide additional space if U. S. Standard Form 26 (Award) does not provide sufficient space.

(b) The decision as to the use of the long form method or the short form method (§ 596.511) for particular procurements is discretionary with the Contracting Officer subject to such limiting instructions as may be issued by the Head of the Procuring Activity concerned. Heads of Procuring Activities should standardize as much as possible, where practicable, on the use of either the long form method or the short form method. See in this connection § 596.502-1 (c) as to the separate form of preprinted back of U. S. Standard Form 30.

(c) The statement of availability of funds and citation of the appropriation allotment will be inserted in the "Accounting and Appropriation Data" block of Standard Form 31. Invitations for bids which will result in indefinite quantity contracts will contain a statement in the "Accounting and Appropriation Data" block to the effect that certification of availability of funds will be made on delivery orders issued under the contract.

(d) General provisions, in addition to those contained in U. S. Standard Form 32 (General Provisions), may be added to the contract as required by Subchapter A, Chapter IV of this title, this Procedure, and directives, with appropriate reference in the Schedule. Any other contract clauses that are approved for use may be added as additional general provisions and incorporated by

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reference in the Schedule, or may be placed in the Schedule, provided they are not inconsistent with the General Provisions in the Form.

(e) These forms are available for supply from adjutant general publications depots.

(f) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from the following forms to the extent indicated:

(1) *Invitation and Bid; U. S. Standard Form 30.* (i) Delete from face side of form (see § 590.302-3 (f)):

(1) That the aggregate number of employees of the bidder and its affiliates is: 500 or more, less than 500.

(ii) Insert on face side of form (see § 590.201-9 (b)):

(2) That he is a regular dealer in, manufacturer of, the supplies bid upon intermediary.

(iii) Delete from reverse side of form (see § 596.001 (b) (1) (iv)): Paragraph 2 of Terms and Conditions—Labor Information.

(2) *General Provisions; U. S. Standard Form 32.* (i) Paragraph 10 "Federal, State and Local Taxes." Substitute for this paragraph the alternate tax clause prescribed by § 600.401 (b). See § 596.001 (b) (1) (ii).

(ii) Paragraph 12 "Disputes": Substitute "disputes" clause prescribed by § 596.103-12 (c).

(iii) Paragraph 14 "Buy American Act": Delete paragraph. See § 596.001 (b) (1) (iii).

(iv) Paragraph 15 "Convict Labor": Delete paragraph.

(v) Paragraph 16 "Eight-hour Law of 1912": Delete paragraph. See § 596.001 (b) (1) (iv).

(vi) Paragraph 17 "Walsh-Healey Public Contracts Act": Delete paragraph. See § 596.001 (b) (1) (iv).

(vii) Paragraph 18 "Nondiscrimination in Employment": Delete paragraph. See § 596.001 (b) (1) (iv).

§ 596.504 Supply Contract; Negotiated (Long Form) (DD Form 351). (a) This form of contract consists of DD Form 351 (Cover Page), DD Form 351-1 (Schedule Page), and DD Form 351-2 (Signature Page).

(b) The form is authorized for use in negotiated contracts, whether fixed-price or cost-reimbursement, for the procurement of supplies or services other than the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. There is no monetary limitation on the use of the form and it may, therefore, be used regardless of amount. The form shall be used in conjunction with U. S. Standard Form 32 (General Provisions) or such provisions as may be authorized for incorporation in particular classes of contracts. U. S. Standard Form 36 (Continuation Sheet) may be used to provide additional space if DD Form 351-1 (Schedule Page) is not sufficient.

(c) These forms are available for supply from adjutant general publications depots.

(d) Authority is granted in effecting procurement outside the United States,

in territories and possessions to deviate from the following forms to the extent indicated:

(1) *Negotiated Contract (Signature Sheet) DD Form 351-2.* Delete the words (see § 590.302-3 (f)):

The Contractor represents that the aggregate number of employees of the Contractor and its affiliates is: 500 or more, less than 500.

(2) *General Provisions; U. S. Standard Form 32.* Same deviations as prescribed in § 596.503 (f) (2).

§ 596.511 Supply Contract; Formal Advertising (Short Form) (U. S. Standard Forms 33 and 32). (a) This form of contract consists of U. S. Standard Form 33 (Invitation, Bid, and Award) and U. S. Standard Form 32 (General Provisions). U. S. Standard Form 36 (Continuation Sheet) will be used to provide additional space if the award portion of U. S. Standard Form 33 is not sufficient.

(b) As to the use of this short form method, see § 596.503 (b). See also in this connection § 596.502-1 (c) as to the separate form of preprinted back of U. S. Standard Form 33.

(c) As to statement of availability of funds and citation of the appropriation allotment, see § 596.503 (c).

(d) As to the insertion of additional general provisions, see § 596.503 (d).

(e) These forms are available for supply from adjutant general publications depots.

(f) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from the following forms to the extent indicated:

(1) *Invitation, Bid, and Award; U. S. Standard Form 33.* (i) Delete from face side of form (see § 590.302-3 (f)):

(1) That the aggregate number of employees of the bidder and its affiliates is 500 or more, less than 500.

(ii) Insert on face side of form (see § 590.201-9 (b)):

(2) That he is a regular dealer in, manufacturer of, the supplies bid upon intermediary.

(iii) Delete from reverse side of form (see § 596.001 (b) (1) (iv)): Paragraph 2 of Terms and Conditions—Labor Information.

(2) *General Provisions; U. S. Standard Form 32.* Same deviations as prescribed in § 596.503 (f) (2).

§ 596.512 Order and voucher for purchase of supplies or services other than personal (DA AGO Form 383). (a) This form of contract consists of DA AGO Form 383 (front side) and DA AGO Form 383a (reverse side), with memorandum copies (yellow). It is a 10-copy form, interleaved with carbons, all fastened together. DA AGO Form 383c (yellow) is the carbon copy of DA AGO Form 383 and DA AGO Form 383a (yellow) is the carbon copy of DA AGO Form 383a. The form is used in connection with the Small Purchases Procedure authorized under Subpart G, Part 590 of this title.

(b) A Continuation Sheet is provided for this form consisting of DA AGO Form

383b with reverse side blank. It is also a 10-copy form, interleaved with carbons, with memorandum copies (yellow). DA AGO Form 383d (yellow) is the carbon copy of DA AGO Form 383b.

(c) These forms are available for supply from adjutant general publications depots.

(d) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from the DA Form 383a (white and yellow) to the extent indicated:

(1) *Clause 1—Disputes.* Substitute "disputes" clause prescribed in § 596.103-12 (c).

(2) *Clause 2—Convict Labor.* Delete clause.

(3) *Clause 3—Nondiscrimination in Employment.* Delete clause. See § 596.001 (b) (1) (iv).

§ 596.513 Purchase Order (WD Form 18). (a) This form consists of WD Form 18 and is used for negotiated purchases only. The Conditions appearing on the reverse side of this form are now obsolete and are replaced by U. S. Standard Form 32 (General Provisions) which form will be used in conjunction with WD Form 18. When it is necessary to reprint the form, the obsolete Conditions will be omitted from the reverse side. U. S. Standard Form 36 (Continuation Sheet) may be used in connection with this form when additional space is required.

(b) This form is available for optional use for procuring any supplies or services, regardless of the number or period of deliveries or of the number of payments involved, where—

(1) The amount of the purchase is less than \$100,000.

(2) No special contract provisions are required, the insertion of which in the particular case would unduly complicate the form.

(3) Signature by the contractor evidencing acceptance of the order is not required, and is not desired. Signature by the contractor is not required where (i) the amount of the order is not in excess of \$5,000 or (ii) the amount of the order is in excess of \$5,000 but is less than \$100,000, and the order is preceded by an oral or written quotation or is based upon a price list.

(c) Where the price is not in excess of \$5,000, the line reading "In accordance with your price list/oral quotation/written quotation of _____" appearing on the form, may be deleted by the Contracting Officer provided the price is not actually based on a price list, oral quotation, or written quotation. Otherwise the Contracting Officer will delete those words which do not apply, and insert the date.

(d) Where purchases exceed \$1,000, U. S. Standard Form 32 (General Provisions) shall be attached to the form as a continuation sheet. Where purchases do not exceed \$1,000, a continuation sheet, in lieu of U. S. Standard Form 32, shall be attached containing the following contract clauses:

(1) *Convict Labor.* (§ 406.103-15 of this title)

(2) *Nondiscrimination in Employment.* (§ 406.103-18 of this title)

(3) *Officials Not to Benefit.* (§ 406.103-19 of this title)

(4) *Covenant Against Contingent Fees.* (§ 406.103-20 of this title)

In either event, additional or optional contract clauses shall be inserted on continuation sheets as required by Subchapter A, Chapter IV of this title, this Procedure or Procuring Activity instructions.

(e) Methods of presenting invoices or vouchers, and of packing, marking, and shipping will be as specified in any space on the face of the form or on a continuation sheet, or as otherwise directed by Procuring Activity instructions.

(f) This form is available for supply from adjutant general publications depots.

(g) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from paragraph (d) of this section to the extent indicated:

(1) Convict Labor clause not required.

(2) Nondiscrimination in Employment clause not required. See § 596.001 (b) (1) (iv).

(3) General Provisions—U. S. Standard Form 32. Same deviations as prescribed in § 596.503 (f) (2).

§ 596.514 Government's Order and Contractor's Acceptance (WD Form 47). (a) This form consists of WD Form 47 and is used for negotiated purchases only. The Conditions appearing on the reverse side of this form are now obsolete and are replaced by U. S. Standard Form 32 (General Provisions) which form will be used in conjunction with WD Form 47. When it is necessary to reprint the form, the obsolete Conditions will be omitted from the reverse side. U. S. Standard Form 36 (Continuation Sheet) may be used with this form when additional space is required.

(b) This form is available for optional use for procuring any supplies or services, regardless of the number or period of deliveries or the number of payments involved, where—

(1) The amount of the purchase is less than \$100,000.

(2) No special contract provisions are required the inclusion of which in the particular case would unduly complicate the form.

(c) The form calls for execution both by the Contracting Officer and the contractor. When so executed, it should be a complete agreement in itself, that is, without reference to separate documents such as proposal or quotation forms.

(d) When filled in, signed by the Contracting Officer, and delivered to the contractor, the form (with or without further continuation sheets) constitutes an offer by the Government to contract on the terms set forth. So far as the information is available at the time the form is delivered to the contractor, all applicable blanks should be filled in. Where a particular matter is not known at the time the form is delivered to the contractor (for example, "Ship To" or "Schedule of Deliveries"), the blanks should be filled in with appropriate language indicating how such information will be subsequently furnished.

(e) When signed by the contractor in the space marked "Contractor's Acceptance" and returned to the Government in the time allowed, the form becomes a binding contract provided the contractor has not made any changes by way of deletion, interlineation, or addition, thus departing from the terms of the offer. Contractors should be instructed to inform the Contracting Officer of any changes which appear to be required, so that amendments may be made and initialed by both parties, or a corrected form issued.

(f) U. S. Standard Form 32 (General Provisions) shall be attached to the form as a continuation sheet. Additional or optional contract clauses shall be inserted on continuation sheets as required by Subchapter A, Chapter IV of this title, this Procedure or Procuring Activity instructions.

(g) Methods of presenting invoices or vouchers, and of packing, marking, and shipping will be as specified in any space on the face of the form or on a continuation sheet, or as otherwise directed by Procuring Activity instructions.

(h) This form is available for supply from adjutant general publications depots.

(i) See § 596.513 (g) which is similarly applicable in the case of this form.

§ 596.515 Delivery Order (DA AGO Form R-5700). (a) This form consists of DA AGO Form R-5700. It was for-

merly numbered as WD Contract Form No. 19. The form may be used regardless of amount, however, DA AGO Form 383 should ordinarily be used when the amount involved is \$1,000 or less. (See § 596.512.)

(1) Delivery orders are used to place orders—

(i) Under already existing contracts executed by other Procuring Activities or other departments of the Government.

(ii) With other Procuring Activities or other departments of the Government furnishing particular services or supplies.

(2) The term "delivery orders" is used in this Procedure to refer to orders of the character described in subparagraph (1) of this paragraph.

(3) The following forms of delivery order may be used in making interbranch or interdepartmental purchases:

(i) DA AGO Form 383 (Subpart G, Part 590 of this chapter and § 596.512) or

(ii) DA AGO Form R-5700.

(4) DA AGO Form R-5700 and DA AGO Form 383, when used to place orders for services or supplies with other departments (see subparagraph (1) (ii) of this paragraph), will be required to be modified to delete reference to a basic purchase agreement.

(b) This form is not available for supply from adjutant general publications depots.

§ 596.515-1 Sample of DA AGO Form R-5700 (Delivery Order). The reverse side of this form is blank.

DEPARTMENT OF THE ARMY

DELIVERY ORDER

Date _____

Delivery Order No. _____

This delivery order applies to the following basic purchase agreement:
Contract (or purchase order) No. _____

DA establishment, office or station, and address _____

To _____
Address _____
Factory Address _____

For methods of presenting invoices or vouchers, see basic purchase agreement.
Payment will be made by Finance Officer, U. S. Army, at _____

Ship to:
Schedule of deliveries: _____

The supplies and services to be obtained by this instrument are authorized by, are for the purposes set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost thereof:

Item No.	Supplies or services	Quantity	Unit	Unit price	Amount
	Total.....				

UNITED STATES OF AMERICA

Contractor is requested to acknowledge receipt of this Delivery Order to the issuing office.

By _____
Contracting Officer

Title _____

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§ 596.531 Construction Contract (Lump Sum); DA AGO Form R-5701.
 (a) This form of contract was formerly numbered as WD Contract Form No. 2.

(b) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from the form to the extent indicated:

(1) Paragraph 6 "Disputes" on page 4 of the form: Substitute "disputes" clause prescribed in § 596.103-12 (c).

(2) Paragraph 14 "Davis-Bacon Act" on page 6 of the form: Delete paragraph. See § 596.001 (b) (1) (iv).

(3) Paragraph 15 "Copeland Act" on page 6 of the form: Delete paragraph. See § 596.001 (b) (1) (iv).

(4) Paragraph 16 "Eight-Hour Law—Overtime Compensation" on page 6 of the form: Delete paragraph. See § 596.001 (b) (1) (iv).

(5) Paragraph 18 "Convict Labor" on page 6 of the form: Delete paragraph.

(6) Paragraph 19 "Nondiscrimination in Employment" on page 7 of the form: Delete paragraph. See § 596.001 (b) (1) (iv).

(7) Paragraph 22 "Buy American Act" on page 7 of the form: Delete paragraph. See § 596.001 (b) (1) (iii).

§ 596.531-1 Sample of form.

Contract No. _____

CONSTRUCTION CONTRACT

DEPARTMENT OF THE ARMY

Contractor and address _____

Contract for: _____

Amount: _____

Payment to be made by: _____

Appropriation data: _____

DA AGO Form R-5701.

1 Feb. 51 Replaces W. D. Contract Form No. 2, which is obsolete.

CONTRACT FOR CONSTRUCTION

This contract, entered into this _____ day of _____, 19_____, by The United States of America (hereinafter called the Government), represented by the Contracting Officer executing this contract, and
 *a corporation organized and existing under the laws of the State of _____
 *a partnership consisting of _____
 *an individual trading as _____ of the city of _____ in the State of _____, hereinafter called the Contractor, witnesseth that the parties hereto do mutually agree as follows:

1. *Statement of work.* The Contractor shall furnish the materials, and perform the work for _____

for the consideration of _____

in strict accordance with the specifications, schedules, drawings, and conditions all of which are made a part hereof and designated as follows _____

The work shall be commenced _____ and shall be completed _____

*Delete all lines which do not apply.

2. *Specifications and drawings.* The contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the contracting officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the specifications shall govern. In any case of difference in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the contracting officer who shall promptly make a determination in writing. Any adjustment by the contractor without this determination shall be at his own risk and expense. The contracting officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

3. *Changes and extras.* The contracting officer may at any time, in writing, and without notice to the sureties, order extras or make changes in the drawings and/or specifications of this contract providing such extras or changes are within the general scope thereof. If any such extra or change causes an increase or decrease in the amount due under this contract, or in the time required for its performance, an equitable adjustment shall be made and the contract shall be modified in writing accordingly. Any claim of the contractor for adjustment under this Clause must be asserted in writing within 30 days from the date of receipt by the contractor of the notification of extra or change: *Provided, however,* That the contracting officer, if he decides that the facts justify such action, may receive, and act upon any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made the dispute shall be determined as provided in Clause 6 hereof. But nothing provided in this clause shall excuse the contractor from proceeding with the prosecution of the work as changed.

4. *Changed conditions.* Should the contractor encounter, or the Government discover, during the progress of the work subsurface and/or latent physical conditions at the site materially differing from those shown on the drawings or indicated in the specifications, or unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the drawings and specifications, the contracting officer shall be notified promptly in writing of such conditions before they are disturbed. The contracting officer shall thereupon promptly investigate the conditions, and if he finds that they do so materially differ the contract shall be modified to provide for any increase or decrease of cost and/or difference in time resulting from such conditions. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 hereof.

5. *Termination for default-damages for delay-time extensions.* (a) If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in Clause 1, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess cost occasioned by the Government thereby, and for liquidated damages for delay, as fixed in the specifications or accompanying papers, until such reasonable time as may be required for the

final completion of the work, or if liquidated damages are not so fixed, any actual damages occasioned by such delay. If the contractor's right to proceed is so terminated, the Government may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor.

(b) If the Government does not terminate the right of the contractor to proceed, as provided in subparagraph (a) hereof, the contractor shall continue the work, in which event he and his sureties shall be liable to the Government, in the amount set forth in the specifications or accompanying papers, for fixed, agreed, and liquidated damages for each calendar day of delay until the work is completed or accepted, or if liquidated damages are not so fixed, any actual damages occasioned by such delay.

(c) The right of the contractor to proceed shall not be terminated, as provided in subparagraph (a) hereof, nor the contractor charged with liquidated or actual damages, as provided in subparagraph (b), because of any delays in the completion of the work due to causes beyond his control which could not reasonably have been anticipated and were without his fault or negligence, including, but not restricted to, acts of God, or of the public enemy, acts of the Government, either in its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes: *Provided,* That the contractor shall, within 10 days from the beginning of any such delay, unless the contracting officer shall grant a further period of time prior to the date of final settlement of the contract, notify the contracting officer in writing of the causes of delay. The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact thereon shall be final and conclusive on the parties hereto, subject only to appeal as provided in Clause 6 hereof.

6. *Disputes.* Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the contracting officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the contractor. Within 30 days from the date of receipt of such copy, the contractor may appeal by mailing or otherwise furnishing to the contracting officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals shall be final and conclusive: *Provided,* That, if no such appeal is taken, the decision of the contracting officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with the performance of the contract and in accordance with the contracting officer's decision.

7. *Payments to contractors.* (a) Unless otherwise provided in the specifications, progress payments will be made as the work progresses at the end of each calendar month, or as soon thereafter as practicable, or at more frequent intervals as determined by the contracting officer, on estimates approved by the contracting officer. In preparing estimates the material delivered on the site and preparatory work done may be taken into consideration.

(b) In making such progress payments there shall be retained 10 percent on the estimated amount until final completion and

acceptance of all work covered by the contract: *Provided, however,* That the contracting officer, at any time after 50 percent of the work has been completed, if he finds that satisfactory progress is being made, may make any of the remaining progress payments in full: *And provided further,* That on completion and acceptance of each separate building, vessel, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made in full, including retained percentages thereon, less authorized deductions.

(c) All material and work covered by progress payments made shall thereupon become the sole property of the Government, but this provision shall not be construed as relieving the contractor from the sole responsibility for all materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Government to require the fulfillment of all of the terms of the contract.

(d) Upon completion and acceptance of all work required hereunder, the amount due the contractor under this contract will be paid upon the presentation of a properly executed and duly certified voucher therefor, after the contractor shall have furnished the Government with a release, if required, of all claims against the Government arising under and by virtue of this contract, other than such claims, if any, as may be specifically excepted by the contractor from the operation of the release in stated amounts to be set forth therein. If the contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, 54 Stat. 1029 (41 U. S. C. 15), a release may also be required of the assignee at the option of the contracting officer.

8. Materials and workmanship. Unless otherwise specifically provided for in the specifications, all workmanship, equipment, materials, and articles incorporated in the work covered by this contract are to be of the most suitable grade of their respective kinds for the purpose. Where equipment, materials, or articles are referred to in the specifications as "equal to" any particular standard, the contracting officer shall decide the question of equality. The contractor shall furnish to the contracting officer for his approval the name of the manufacturer of machinery, mechanical and other equipment which he contemplates incorporating in the work, together with their performance capacities and other pertinent information. When required by the specifications, or when called for by the contracting officer, the contractor shall furnish the contracting officer for approval full information concerning the materials or articles which he contemplates incorporating in the work. Samples of materials shall be submitted for approval when so directed. Machinery, equipment, materials, and articles installed or used without such approval shall be at the risk of subsequent rejection. The contracting officer may in writing require the contractor to remove from the work such employee as the contracting officer deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed by the contracting officer to be contrary to the public interest.

9. Inspection. (a) Except as otherwise provided in subparagraph (d) hereof, all material and workmanship (if not otherwise designated by the specifications) shall be subject to inspection, examination, and test by representatives of the Contracting Officer at any and all times during manufacture and/or construction (and at any and all places where such manufacture and/or construction are carried on.) The Government shall have the right to reject defective material and workmanship or require its correction. Rejected workmanship shall be satisfactorily corrected and rejected material shall be satisfactorily replaced with proper

material without charge therefor, and the contractor shall promptly segregate and remove the rejected material from the premises. If the contractor fails to proceed at once with the replacement of rejected material and/or the correction of defective workmanship the Government may, by contract or otherwise, replace such material and/or correct such workmanship and charge the cost thereof to the contractor, or may terminate the right of the contractor to proceed as provided in Clause 5 of this contract, the contractor and surety being liable for any damage to the same extent as provided in said Clause 5 for terminations thereunder.

(b) The contractor shall furnish promptly without additional charge, all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and test that may be required by the contracting officer. All inspection and tests by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be as described in the specifications. The contractor shall be charged with any additional cost of inspection when material and workmanship is not ready at the time inspection is requested by the contractor.

(c) Should it be considered necessary or advisable by the Government at any time before final acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the contractor shall on request promptly furnish all necessary facilities, labor and material. If such work is found to be defective or non-conforming in any material respect, due to fault of the contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, the actual direct cost of labor and material necessarily involved in the examination and replacement, plus 15 percent, shall be allowed the contractor and he shall, in addition, if completion of the work has been delayed thereby, be granted a suitable extension of time on account of the additional work involved.

(d) Inspection of material and finished articles to be incorporated in the work at the site shall be made at the place of production, manufacture, or shipment, whenever the quantity justifies it, unless otherwise stated in the specifications; and such inspection and acceptance in writing, unless otherwise stated in the specifications, shall be final, except as regards latent defects, departures from specific requirements of the contract and the specifications and drawings made a part thereof, damage or loss in transit, fraud, or such gross mistakes as amount to fraud. Subject to the requirements contained in the preceding sentence, the inspection of material and workmanship for final acceptance as a whole or in part, shall be made at the site. Nothing contained in this paragraph (d) shall in any way restrict the Government's rights under any warranty or guarantee.

10. Superintendence by contractor. The contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the contracting officer, on the work at all times during progress, with authority to act for him.

11. Permits and responsibility for work. The contractor shall, without additional expense to the Government, obtain all required licenses and permits and be responsible for all damages to persons or property that occur as a result of his fault or negligence in connection with the prosecution of the work, and shall be responsible for all materials delivered and work performed until completion and final acceptance except for any completed unit thereof which may theretofore have been finally accepted.

12. Other contracts. The Government may undertake, or award other contracts for, additional work, and the contractor shall fully

cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the contracting officer. The contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

13. Additional security. Should any surety upon any bond furnished in connection with this contract become unacceptable to the Government, or if any such surety shall fail to furnish reports as to his financial condition from time to time as requested by the Government, the contractor must promptly furnish such additional security as may be required from time to time to protect the interests of the Government or of persons supplying labor or materials in the prosecution of the work contemplated by the contract.

14. Davis-Bacon Act. This contract, to the extent that it is of a character specified in the Davis-Bacon Act as amended (40 U. S. Code 276a), is subject to all provisions and exceptions of said Davis-Bacon Act, including in particular the following:

(a) The contractor and his subcontractors shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such pay-roll deductions as are permitted by applicable regulations prescribed by the Secretary of Labor), the full amounts accrued at time of payment computed at wage rates not less than those stated in the specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale or wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

(b) The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed on the work the difference between (i) the rates of wages required by the contract to be paid laborers and mechanics on the work and (ii) the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(c) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the contracting officer may (i) by written notice to the contractor, terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (ii) prosecute the work to completion by contract or otherwise, whereupon the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

15. Copeland Act. To the extent that this contract is of a character specified in the Copeland ("Anti-Kickback") Act as amended (18 U. S. C. 874 and 40 U. S. C. 276c), the contractor agrees to comply with the regulations, rulings, and interpretations of the Secretary of Labor pursuant to said Copeland Act, which act makes it unlawful to induce any person employed in the construction or repair of public buildings or public works to give up any part of the compensation to which he is entitled under his contract of employment; and the contractor agrees to insert a like provision in all subcontracts hereunder.

16. Eight-Hour Law—Overtime compensation. This contract, to the extent that it is of a character specified in the Eight-Hour

RULES AND REGULATIONS

Law of 1912 as amended (40 U. S. C. 324-326) and is not covered by the Walsh-Healey Public Contracts Act (41 U. S. C. 35-45), is subject to the following provisions and exceptions of said Eight-Hour Law of 1912 as amended, and to all other provisions and exceptions of said law:

No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the contractor or any subcontractor contracting for any part of the said work, shall be required or permitted to work more than eight hours, in any one calendar day upon such work, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this clause. The wages of every such laborer and mechanic employed by the contractor or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day; any work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this clause a penalty of five dollars shall be imposed upon the contractor for each such laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this clause; and all penalties thus imposed shall be withheld for the use and benefit of the Government.

17. *Notice to the Government of labor disputes.* Whenever the contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the contracting officer.

18. *Convict labor.* In connection with the performance of work under this contract, the contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

19. *Nondiscrimination in employment.* In connection with the performance of work under this contract, the contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin; and further agrees to insert the foregoing provision in all subcontracts hereunder except subcontracts for standard commercial supplies or for raw materials.

20. *Covenant against contingent fees.* The contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

21. *Officials not to benefit.* No member or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

22. *Buy-American Act.* The contractor agrees that in the performance of the work under this contract the contractor, subcontractors, material men and suppliers shall use only such unmanufactured articles, ma-

terials and supplies (which term "articles, materials and supplies" is hereinafter referred to in this clause as "supplies") as have been mined or produced in the United States, and only such manufactured supplies as have been manufactured in the United States substantially all from supplies mined, produced, or manufactured, as the case may be, in the United States. Pursuant to the Buy-American Act (41 U. S. C. 10 a-d), the foregoing provisions shall not apply (i) with respect to supplies excepted by the Secretary from the application of that Act, (ii) with respect to supplies for use outside the United States, or (iii) with respect to the supplies to be used in the performance of work under this contract which are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (iv) with respect to such supplies, from which the supplies to be used in the performance of work under this contract are manufactured, as are of a class or kind determined by the Secretary or his duly authorized representative not to be mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, provided that this exception (iv) shall not permit the use in the performance of work under this contract of supplies manufactured outside the United States if such supplies are manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

23. *Assignment of claims.* (a) Pursuant to the provisions of the Assignment of Claims Act of 1940 (81 U. S. C. 203, 41 U. S. C. 15), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Notwithstanding any provision of this contract, payment to an assignee of any claim under this contract shall not be subject to reduction or set-off for any indebtedness of the contractor to the Government arising independently of this contract. (The preceding sentence applies only if this contract is with a military department.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret", "Secret", "Confidential", or "Restricted", be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same; provided that a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the contracting officer.

24. *Patent indemnity.* Except as otherwise specifically provided with respect to any contract items or parts thereof, which are not standard commercial supplies, the contractor agrees to indemnify the Government and its officers, agents and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret

or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder. The foregoing indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given an opportunity to present recommendations as to the defense thereof; and further, such indemnity shall not apply in any one of the following situations: (i) any infringement resulting from the addition to any such supplies or other supplies not furnished by the contractor for the purpose of such addition; (ii) any settlement of a claim of infringement made without the consent of the contractor, unless required by final decree of a court of competent jurisdiction; (iii) any claim of infringement arising from use or disposal outside the scope of any license limitation under which the contractor is bound, provided that the contractor has notified the Government of the limitation prior to first delivery under this contract; (iv) any infringement necessarily resulting from changes (other than the substitution of another standard commercial part or component manufactured or supplied by the Contractor) ordered pursuant to this contract, or from specific written instructions given by the contracting officer directing a manner of performing the contract not normally utilized by the contractor.

25. *Notice and assistance regarding patent infringement.* (a) The contractor agrees to report to the contracting officer, promptly and in reasonable written detail, each claim of patent infringement based on the performance of this contract and asserted against it, or against any of its subcontractors if it has notice thereof.

(b) In the event of litigation against the Government on account of any claim of infringement arising out of the performance of this contract or out of the use of any supplies furnished or construction work performed hereunder, the contractor agrees that it will furnish to the Government upon request, all evidence and information in its possession pertaining to the defense of such litigation. Such information shall be furnished at the expense of the Government except in those cases in which the contractor has agreed to indemnify the Government against the claim being asserted.

26. *Reporting of royalties.* If this contract is in an amount which exceeds \$10,000, the contractor agrees to report in writing to the contracting officer, during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or royalty rates paid or to be paid by it directly to others in connection with the performance of this contract, together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit identification of the patents or other basis on which royalties are to be paid. Where the contractor's compliance with the foregoing reporting requirement is found by the contracting officer to be impracticable because of the size of the contractor's business or because of the nature of its accounting procedures, the contractor may furnish one or more reports, based on its established accounting periods and covering the entire contract period, of royalties in excess of \$1,000 (if computed on an annual basis) paid or to be paid to each licensor on the contractor's over-all business, together with such other information as will permit identification of the patents or other basis on which royalties are to be paid, in which event the contractor shall furnish the contracting officer, upon his request and at Government expense, an allocation of such royalty payments to Government business or

RULES AND REGULATIONS

terms and conditions therein stated. Said formal contract will be in the form used by the Department for procuring supplies and services of the kind indicated in Exhibit "A." This form will include the clauses required by Federal law, Executive Order, and the procurement regulations and directives applicable to such procurements, which clauses are incorporated herein by reference. Exhibit "A," including the termination clause set forth therein, is also made a part hereof.

2. You are directed, upon your acceptance of this letter, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies and performance of the services, called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed within the time specified in Exhibit "A," or if no time is so specified, at the earliest practicable date.

3. You shall enter into negotiation for the execution of the formal contract with the Department without delay. In this connection, you shall submit a firm quotation for the articles and services covered by this letter. Such quotation shall be supported by a cost breakdown reflecting the price factors outlined in the suggested form enclosed herewith.

4. Unless otherwise provided in Exhibit "A" no payments to you shall be made under this letter except as provided in paragraph 5 below.

5. In the event of a termination of performance of the work or any part thereof under this letter by notice given pursuant to the Termination clause incorporated herein by reference, or in the event that the formal contract is not executed within the time specified in Exhibit "A," or any extension of such time as may be authorized in writing by the Contracting Officer, you shall be paid in accordance with the provisions of such Termination clause, except that no profit will be allowed if the Contracting Officer finds that you have delayed the execution of a formal contract for an unreasonable period; provided, however, that in no event shall the liability of the Government to you hereunder exceed the amount specified in Exhibit "A" or such other amount as may be authorized in writing by the Contracting Officer.

6. Please indicate your acceptance of the foregoing by signing this letter and the enclosed copies thereof. Retain one copy for your files and return the remainder to this office.

This contract is entered into pursuant to the provisions of Section 2 (c) (—) of the Armed Services Procurement Act of 1947 (Public Law 413, 80th Congress) and any required determination and findings have been made.

Sincerely yours,

(Contracting Officer)

Accepted, as of the date of this letter:

By _____

(Type above, name and position of officer executing this acceptance)

DA AGO Form R-5703

1 Feb. 51

§ 596.561 Negotiated Utility Services Contract (Short Form). (a) This form consists of DA AGO Form R-5628. The form and instructions for its use are set forth in SR 420-470-2 (Special Regulations governing utility contracts).

(b) The clause for multiple service locations (DA AGO Form R-5635) and the clause for connection charge (DA AGO Form R-5636) are also authorized for

use in connection with this short form. See § 596.562.

(c) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from this form to the extent indicated:

(1) Paragraph 7 "Convict Labor": Delete paragraph.

(2) Paragraph 8 "Nondiscrimination in Employment": Delete paragraph. See § 596.001 (b) (1) (iv).

(3) Paragraph 9 "Disputes": Substitute "Disputes" clause prescribed in § 596.103-12 (c).

(d) As to the forms listed in paragraphs (a) and (b) of this section, such additional deviations may be approved by the Head of the Procuring Activity concerned. Heads of Procuring Activities will retain as much of the language of the approved forms as local conditions permit and will approve deviations only to the extent necessary to make the standard forms usable in their areas.

§ 596.562 Negotiated Utility Services Contract (Long Form). (a) This form consists of the following DA AGO Forms:

(1) Form of Utility Service Contract—DA AGO Form R-5629.

(2) Electric Service Specifications—DA AGO Form R-5630.

(3) Gas Service Specifications—DA AGO Form R-5631.

(4) Water Service Specifications—DA AGO Form R-5632.

(5) Sewage Service Specifications—DA AGO Form R-5633.

(6) Steam Service Specifications—DA AGO Form R-5634.

(7) Multiple Service Locations Clause—DA AGO Form R-5635.

(8) Connection Charge Clause—DA AGO Form R-5636.

(b) These forms and instructions for their use are set forth in SR 420-470-2.

(c) Authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from DA AGO Form R-5629 to the extent indicated:

(1) Paragraph 9 "Convict Labor": Delete paragraph.

(2) Paragraph 10 "Nondiscrimination in Employment": Delete paragraph. See § 596.001 (b) (1) (iv).

(3) Paragraph 11 "Disputes": Substitute "Disputes" clause prescribed in § 596.103-12 (c).

(d) As to the forms listed in paragraph (a) of this section, such additional deviations may be approved by the Head of the Procuring Activity concerned. Heads of Procuring Activities will retain as much of the language of the approved forms as local conditions permit and will approve deviations only to the extent necessary to make the standard forms usable in their areas.

§ 596.563 Contract for Academic Instruction; DA AGO Form 357. (a) This form consists of DA AGO Form 357. Instructions for its use are contained in SR 350-230-5 (Special Regulations governing contracts for academic construction).

(b) The form is available for supply from The Adjutant General, Attention: AGAO-R.

(c) Authority is granted in effecting procurement outside the United States,

its territories and possessions to deviate from the form to the extent indicated.

(1) Article 8 "Disputes" on page 3 of form: Substitute "Disputes" clause prescribed in § 596.103-12 (c).

(2) Article 12 "Antidiscrimination" on page 3 of form: Delete article. See § 596.001 (b) (1) (iv).

(3) Article 13 "Eight-Hour Law of 1912" on page 3 of form: Delete article. See § 596.001 (b) (1) (iv).

(4) Article 14 "Convict Labor" on page 3 of form: Delete article.

§ 596.564 Order Form to Contract for Academic Instruction, DA AGO Form 358. (a) This form consists of DA AGO Form 358. Instructions for its use are contained in SR 350-230-5.

(b) The form is available for supply from The Adjutant General, Attention: AGAO-R.

§ 596.565 Contract for Movement of Household Goods and Effects (DD Form 327). (a) This form consists of DD Form 327, and is to be used in accordance with the instructions contained in section II, Commercial Traffic Bulletin 13, 1946.

(b) The form is available for supply from adjutant general publications depots.

(c) This form is not applicable for use in effecting procurement outside the United States, its territories and possessions. Authority is granted for Heads of Procuring Activities to prescribe suitable forms for such procurement, using this form as a general guide.

§ 596.566 Master Lump Sum Ship Repair Contract. This contract form is in process of revision. As soon as it is approved, it will be set forth in this section together with instructions for its use.

§ 596.567 Stevedoring Contract. This contract form is in process of revision. As soon as it is approved, it will be set forth in this section together with instructions for its use.

§ 596.571 Invitation for Bids (Construction Contract). (a) This form is numbered WD Standard Procurement Form No. 116. The form is prescribed for use in the procurement of construction by formal advertising (see § 591.201 (b)).

(b) A revised text of this form will be made available at an early date. Interim use, however, of WD Standard Procurement Form No. 116 is authorized in the meantime. Local reproduction is authorized. In reproducing WD Standard Procurement Form No. 116, the Bureau of the Budget approval notation in the upper right hand corner should be omitted.

§ 596.572 Bid (Construction Contract). (a) This form is numbered WD Standard Procurement Form No. 117. The form is prescribed for use in the procurement of construction by formal advertising (see § 591.201 (b)).

(b) A revised text of the form will be made available at an early date. Interim use, however, of WD Standard Procurement Form No. 117 is authorized in the meantime. Local reproduction is authorized. In reproducing WD Standard Procurement Form No. 117, the Bu-

reau of the Budget approval notation in the upper right hand corner should be omitted. The reference also in the second paragraph of the form to "Eng Form 1619" should be changed to "Form 1617."

§ 596.573 Plant and Equipment Schedule. (a) This form is numbered WD Standard Procurement Form No. 1617. The form is prescribed for use in the procurement of construction by formal advertising and will be attached to the bid form when required by the invitation for bids.

(b) A revised text of this form will be made available at an early date. Interim use, however, of WD Standard Procurement Form No. 1617 is authorized in the meantime. Local reproduction is authorized. In reproducing WD Standard Procurement Form No. 1617, the Bureau of the Budget approval notation in the upper right hand corner should be omitted.

§ 596.574 Unit Price Schedule. (a) This form is numbered WD Standard Procurement Form No. 1618. The form is prescribed for use in the procurement of construction by formal advertising and will be attached to the bid form when required by the invitation for bids.

(b) A revised text of this form will be made available at an early date. Interim use, however, of WD Standard Procurement Form No. 1618 is authorized in the meantime. Local reproduction is authorized. In reproducing WD Standard Procurement Form No. 1618, the Bureau of the Budget approval notation in the upper right hand corner should be omitted.

§ 596.577 Request for Proposal and Contractor's Proposal (Short Form); WD Form 104. (a) This short form consists of WD Form 104 and is used for negotiated purchases only. It may be used for procurement by negotiation of supplies (excluding construction work) for small amounts where effective competition exists and where the information to be obtained from suppliers may ordinarily be confined substantially to the quotation of prices.

(b) Changes may be made in this form to accommodate the needs of the particular procurement. This also applies to the statutory authorities now appearing on the form, which should be changed to Public Law 413, 80th Congress. When it is necessary to reprint the form, the statutory citation thereon will be corrected and certain other minor changes made.

(c) This form is available for supply from adjutant general publications depots.

§ 596.578 Request for Proposal and Contractor's Proposal (Long Form); WD Forms 105, 105A, 105B, and 105C. (a) This long form consists of WD Forms 105, 105A, 105B, and 105C and is used for negotiated purchases only. These forms may be used for procurement, by negotiation, of supplies other than construction, whenever, in the opinion of the Procuring Activity involved, detailed cost or price information should be obtained from suppliers as an aid to adequate negotiation. Within the scope of the fore-

going rule, each Procuring Activity may prescribe more precisely the size and types of procurement for which these forms are to be used.

(b) The use of the related forms with Form No. 105 is discretionary. The procurement office is required to select and specify (within established limits) the data expected. Thus, the procurement office has latitude to use the related forms according to the necessities of particular situations, and may relieve the supplier of the task of compiling information which is not pertinent to the procurement or which is already known to the procurement office. It is of the utmost importance that no contractor be asked to complete the forms related to WD Form 105 with respect to information which will not be pertinent or useful in properly effecting the particular procurement, or which is already on file with the procurement office. Where necessary, the information obtained through use of the form may be clarified or amplified through correspondence or personal negotiation. The information submitted in or with WD Form 105 and related forms will be used as a basis of negotiations with the prospective contractor, in accordance with Subchapter A, Chapter IV of this title and this Procedure and any other instructions that may be in force from time to time. One copy of the "Instructions for Completing War Department Form 105" should be sent to each contractor along with the necessary number of counterparts of Form 105.

(c) Changes may be made in these forms to accommodate the needs of the particular procurement. This also applies to the statutory authorities now appearing on WD Form 105, which should be changed to Public Law 413, 80th Congress. When it is necessary to reprint the form, the statutory citation thereon will be corrected and certain other minor changes made.

(d) These forms are available for supply from adjutant general publications depots.

§ 596.579 Security Requirements Check List; DD Form 254. (a) This form consists of DD Form 254. For requirements as to use in precontract negotiations, see § 592.212-2.

(b) DD Form 254 shall be prepared, in accordance with the instructions thereon, and accompany all contracts and subcontracts classified Top Secret, Secret, Confidential, or Restricted, and all contracts and subcontracts involving access to classified matter by a contractor or subcontractor. In addition to the initial completion of the form, necessary changes in security classification will be made as appropriate and will be reflected on the form when lower down-grading action is taken in accordance with applicable regulations. This form shall not be considered a part of the contract but shall be used to implement the "Security Requirements Clause" and any secrecy or security agreement which may be existent.

(c) This form is available for supply from adjutant general publications depots.

§ 596.580 Contractor's Statement of Contingent or Other Fees for Soliciting

or Securing Contract (U. S. Standard Form 119). (a) U. S. Standard Form 119 shall be used without deviation in cases in which:

(1) Section 590.608 requires its use.

(2) The Contracting Officer desires to obtain information from contractors or prospective contractors with respect to whether they have employed or retained any company or person (other than a full-time employee) to solicit or secure contracts.

(b) This form is available for supply from adjutant general publications depots.

(c) Section 590.608 does not make mandatory the use of this form in effecting procurement outside the United States, its territories and possessions. When Contracting Officers desire to use this form, as prescribed in paragraph (a) (2) of this section, authority is granted in effecting procurement outside the United States, its territories and possessions to deviate from the form to the extent necessary.

§ 596.581 Abstract of Bids (Short Form); WD Form 14. (a) This form consists of one sheet printed on both sides. Inapplicable instructions appearing on the reverse side of this form will be disregarded.

(b) This form is available for supply from adjutant general publications depots.

§ 596.582 Abstract of Bids (Long Form); WD Form 29. (a) This form consists of one sheet printed on both sides. Inapplicable instructions appearing on the front page of this form will be disregarded.

(b) This form is available for supply from adjutant general publications depots.

§ 596.583 Abstract of Bids (Long Form); Continuation Sheet; WD Form 29A. (a) This form consists of one sheet printed on both sides.

(b) This form is available for supply from adjutant general publications depots.

§ 596.591 Contract of Sale of Property (Negotiated Sale). This form of contract will be prescribed for use in sales to contractors as authorized by the terms of the contract, and other authorized sales incident to or related to procurement. A form for general use has not as yet been approved; however, in the meantime, cases requiring the use of such a form should be submitted to the Current Procurement Branch, Procurement Division, Office of the Assistant Chief of Staff, G-4. As soon as the form is approved for general use, its text will be made available.

PART 597—TERMINATION

Sec. 597.000 Scope of part.

SUBPART J—CONTRACT CLAUSES

597.1001	Applicability.
597.1002	Settlement of contracts terminated for convenience.
597.1003	Termination clause for fixed-price contracts.
597.1004	Termination clause for subcontracts.
597.1005	Contract clause for cost-reimbursement type contracts.

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597.1006	Termination clause for research and development contracts.
597.1007	Termination clause for fixed-price construction contracts.
597.1008	Short-form termination clauses.
597.1008-1	Fixed-price supply contracts over \$1,000 and under \$5,000.
597.1008-2	Fixed-price non-personal service contracts.

AUTHORITY: §§ 597.000 to 597.1008-2 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 597.000 Scope of part. Pending the issuance of Part 407 of this title, this part sets forth policies with respect to the inclusion of a Termination for Convenience of the Government clause in contracts for the procurement of supplies or services.

NOTE: Subparts A through I of this part are being reserved for implementing Part 407 of this title, subsequent to its issuance.

SUBPART J—CONTRACT CLAUSES

§ 597.1001 Applicability. In any contract entered into either by formal advertising or by negotiation, a Termination for Convenience of the Government clause shall be inserted as required by Part 407 of this title: *Provided*, That prior to the issuance and effective date of Part 407 of this title, the appropriate termination clause required by this Procedure will be inserted.

§ 597.1002 Settlement of contracts terminated for convenience. In the event of a termination for convenience of the Government under contracts including one of the clauses set forth in this part, Contracting Officers will request instructions through the Head of their respective Procuring Activities as to procedures and policies to be followed from the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch).

§ 597.1003 Termination clause for fixed-price contracts. In accordance with § 406.103-21 of this title, the following clause shall be inserted in all fixed-price supply contracts amounting to more than \$1,000:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

nation; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all claims arising out of such termination of orders and subcontracts, subject to the approval or ratification of the Contracting Officer, which approval or ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however*, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may keep any such property at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the contractor to submit its termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit, but only on work done in connection with the terminated portion of the contract. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Such amendment shall be final and conclusive upon the Contractor and the Government. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts

which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of:

(i) The costs incurred in the performance of the work terminated, exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e) (1) hereof.

(ii) The cost (which may include a reasonable allowance for profit to subcontractors or vendors, but only on work done in connection with the terminated portion of any subcontract or order) of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts should be included in the costs payable under (1) above), provided that:

(A) Each such claim has been settled with the written approval of the Contracting Officer; or

(B) If a final judgment has been rendered against the Contractor, or a subcontractor or vendor, by a court of competent jurisdiction determining the liability of the Contractor, subcontractor or vendor with respect to any such claim, the Contracting Officer has determined that such judgment or a part thereof is allocable to the terminated portion of the contract.

(In order for a judgment to be allowable under this subparagraph (ii), the Contractor, or subcontractor or vendor concerned, must have given the Contracting Officer prompt notice of the initiation of the proceedings in which such judgment was rendered and offered in writing to give the Government complete control of the defense of the proceedings, and must have diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, must have rendered such reasonable assistance as has been requested by the Government. If such judgment includes amounts for loss of anticipatory profits or consequential damages, such amounts will not be allowable under this subparagraph.)

(iii) A sum equal to 2 percent of that part of the amount determined under (i) which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (i) above.

(8) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as

reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph (e) (1) and paragraph (e) (2) (i), any amounts allocable to or payable in connection with property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination of the amount due to the Contractor made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon the Contractor and the Government.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments on account theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(h) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government.

(j) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the Cost Principles set forth in section XV of the Armed Services Procurement Regulation as in effect on the date of this contract.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Govern-

ment at all reasonable times at the office of the Contractor but without expense to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 597.1004 Termination clause for subcontracts. The following form of termination clause is suggested for use by prime contractors in fixed-price subcontracts:

TERMINATION CLAUSE FOR SUBCONTRACTS

(a) The buyer may terminate work under this order, in whole or in part, at any time by written or telegraphic notice whenever (1) the Government requests the termination of this order, or (2) whenever the articles or services of the kind or type covered by this order are no longer required by the buyer in the performance of its contract with the Government (or a higher tier contractor), or the buyer's contract is amended so as to eliminate or reduce such requirements. Such notice shall state the extent and effective date of such termination. Upon the receipt thereof, the seller will, as and to the extent directed by the buyer, stop work under this order and the placement of further orders or subcontracts hereunder, terminate work under orders and subcontracts outstanding hereunder, and take any necessary action to protect property in the seller's possession in which the buyer has or may acquire an interest.

(b) If the parties cannot agree within a reasonable time upon the amount of fair compensation to the seller for such termination, the buyer in addition to making prompt payment of amounts due for articles delivered or services rendered prior to the effective date of termination, will pay to the seller, without duplication of any items, the following amounts:

(1) The contract price for all articles or services which have been completed in accordance with this order and not previously paid for.

(2) (i) The actual costs incurred by the seller which are properly allocable or apportionable to the terminated portion of this order, including the cost of discharging liabilities which are so allocable or apportionable (which cost may include a reasonable allowance for profit but only on work done in connection with the terminated portion of any subcontracts or orders hereunder), but excluding any charge for interest on borrowings, and

(ii) A sum equal to 2 percent of the part of such costs representing the costs of articles or materials not processed by the seller, plus a sum equal to 8 percent of the remainder of such costs, but the aggregate of such sums shall not exceed 6 percent of the whole of such costs. For the purpose of subdivision (ii) such costs shall exclude the cost of discharging liabilities for parts, materials and services not received by the seller before the effective date of termination.

(3) The reasonable costs of the seller in making settlement hereunder and in protecting property in which the buyer has or may acquire an interest.

Payments under this paragraph (b), exclusive of payments under subparagraph (3), shall not exceed the aggregate price specified in this order, less payments otherwise made or to be made.

(c) With the consent of the buyer, and subject to any right or interest which the United States Government may have therein, the seller may keep at an agreed price or sell at an approved price any completed articles, or any articles, materials, work in process or other things the cost of which

is allocable or apportionable to this order under paragraph (b) (2) above, and will credit or pay the amounts so agreed or received to the price or cost of the work covered by this order or as the buyer otherwise directs. As directed by the buyer, the seller will transfer title to, and make delivery of, any such articles, materials, work in process or other things not so kept or sold. Appropriate adjustment will be made for delivery costs or savings therein.

(d) Any determination of costs under paragraph (b) hereof shall be in accordance with the Cost Principles set forth in Section XV of the Armed Services Procurement Regulation as in effect on the date of the prime contract.

(e) The provisions of this Clause shall not limit or affect the right of the buyer to cancel this order for the default of the seller.

§ 597.1005 Contract clause for cost-reimbursement type contracts. The following clause shall be inserted in all cost-reimbursement type contracts, as defined in §§ 402.405 and 402.406 of this title, for supplies other than (a) construction, alteration or repair of buildings, bridges, roads, or other kinds of real property, or (b) experimental, developmental, or research work:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, (1) whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default, or (2) whenever for any reason the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders or subcontracts so terminated; (5) with the approval or ratification of the Contracting Officer, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable, in whole or in part, in accordance with the provisions of this contract; (6) transfer title (to the extent that title has not already been transferred) and, in the manner, to the extent and at the times directed by the Contracting

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Officer, deliver to the Government (1) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would be required to be furnished to the Government, and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract; (7) use his best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however,* That the Contractor (1) shall not be required to extend credit to any purchaser, and (ii) may keep any such property at a price or prices approved by the Contracting Officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest. The Contractor shall proceed immediately with the performance of the above obligations, notwithstanding any delay in determining or adjusting the amount of the fixed fee, or any item of reimbursable cost, under this clause.

(c) The Contracting Officer in his discretion may, and at the request of the Contractor shall, limit the negotiations for settlement to the fixed fee, if any, in which event any costs allocable to the terminated portion of the contract shall continue to be presented for payment by the Contractor on prescribed cost vouchers. Promptly upon issuance of the Notice of Termination, the Contracting Officer shall inform the Contractor in writing either: (i) that the settlement will be limited to the fixed fee; or (ii) that the settlement will include costs and fixed fee unless the Contractor within thirty days, requests in writing that they be limited to the fixed fee.

(d) After receipt of a Notice of Termination and after it has been decided whether or not the settlement is to be limited to the fixed fee, the Contractor shall submit to the Contracting Officer its termination claim. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(e) Subject to the provisions of paragraphs (c) and (d), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Such

amendment shall be final and conclusive upon the Contractor and the Government.

(f) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (e) above, as to the amounts with respect to costs and fixed fee or as to the amount of the fixed fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (e), shall pay to the Contractor the amounts determined as follows:

(1) If the settlement includes costs and fixed-fee.

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer, provided, however, that the Contractor shall proceed as rapidly as practicable to discontinue such costs.

(ii) There shall be included therein the cost, so far as not included under (i) above (which cost may include a reasonable allowance for profit to the subcontractors or vendors, but only on work done in connection with the terminated portion of any subcontract or order), of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b) (5) above, which are properly chargeable to the terminated portion of the contract provided that,

(A) Each such claim has been settled with the written approval of the Contracting Officer; or

(B) If a final judgment has been rendered against the Contractor, a subcontractor or vendor by a court of competent jurisdiction determining the liability of the Contractor, subcontractor or vendor with respect to any such claim, the Contracting Officer has determined that such judgment or a part thereof is allocable to the terminated portion of the contract.

In order for a judgment to be allowable under this subparagraph (ii), the Contractor, subcontractor, or vendor concerned must have given the Contracting Officer prompt notice of the initiation of the proceedings in which such judgment was rendered and offered in writing to give the Government complete control of the defense of the proceedings, and must have diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, must have rendered such reasonable assistance as has been requested by the Government. If such judgment includes amounts for loss of anticipatory profits or consequential damages, such amounts will not be allowable under this subparagraph.

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however,* That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal.

(iv) There shall be included therein a portion of the fixed fee payable under the contract, determined as follows:

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of

the fee equivalent to the percentage of the completion of work contemplated by the contract, less fixed fee payments previously made hereunder.

(B) In the event of the termination of this contract for the default of the Contractor, the total fixed fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this subparagraph is less than the total payment of fixed fee theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fixed fee, the amount thereof will be determined in accordance with subparagraph (f) (1) (iv) above.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination of the amount due to the Contractor made by the Contracting Officer under paragraphs (d) and (f) above, except that if the Contractor has failed to submit his claim within the time provided in paragraph (d) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above the Government shall pay to the Contractor the following: (i) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon the Contractor and the Government.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fixed fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government.

(k) The provisions of this clause relating to the fixed fee shall be inapplicable if this contract does not provide for payment of a fixed fee.

(1) Unless otherwise provided for in this contract, or by applicable statute, the Contractor from the effective date of termination and for a period of 5 years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without expense to the Government, all its books, records, documents, and other evidence bearing on the cost and expenses of the Contractor under this contract and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 597.1006 Termination clause for research and development contracts. The following clause shall be inserted in all research and development contracts amounting to more than \$1,000:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all claims arising out of such termination of orders and subcontracts, subject to the approval or ratification of the Contracting Officer, which approval or ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed reports, plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may keep any such property at a price or prices approved by the Contracting Officer; *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of

such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Such amendment shall be final and conclusive upon the Contractor and the Government.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the Contractor the total amount of its costs allocable to the contract up to the time of termination and reasonable costs of settlement including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory.

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the Cost Principles set forth in Section XV of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination of the amount due to the Contractor made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon the Contractor and the Government.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other unliquidated payments on account theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials,

supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered or credited to the Government.

(i) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without expense to the Government, all its books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 597.1007 Termination clause for fixed-price construction contracts. The following clause shall be inserted in all fixed-price construction contracts amounting to more than \$1,000, except that Contracting Officers may, at their discretion, omit the termination clause from fixed-price construction contracts under \$5,000 when the probability of termination for convenience is remote such as in necessary repair, improvements or additions to existing structures:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under the contract on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated; (5) settle all claims arising out of such termination of orders and subcontracts, subject to the approval or ratification of the Contracting Officer, which approval or ratification shall be final for all the purposes of this clause; (6) transfer title and deliver to the Government, in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government; (7) use its best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provision (6) of this paragraph: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may keep any such property at a price or prices approved by the Contracting Officer; *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of

the contract, and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

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to in provision (6) of this paragraph: *Provided, however,* That the Contractor (1) shall not be required to extend credit to any purchaser, and (ii) may keep any such property at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim, in the form prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one year period or authorized extension thereof. Upon failure of the Contractor to submit its termination claim within the time allowed, the Contracting Officer shall determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination.

(d) Subject to the provisions of paragraph (c), the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit; however, such profit shall be computed only on work done under the contract. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Such amendment shall be final and conclusive upon the Contractor and the Government. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Government, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the Contractor the following amounts:

(1) In respect of all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of (i) the cost of such work, (ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b) (5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under subdivision (i) above, and (iii) a sum, equal

to 2 percent of the part of the amount determined under subdivision (i) which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under subdivision (i), which for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings.

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b) (9) hereof; and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under subdivision (i) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in paragraph (e) (1), any amounts allocable to or payable in connection with property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b) (7).

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination of the amount due to the Contractor made by the Contracting Officer under paragraphs (c) or (e) above, except that if the Contractor has failed to submit its claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal; any such determination being final and conclusive upon the Contractor and the Government.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated partial or progress payments or other unliquidated payments on account theretofore made to the Contractor; (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(h) If the termination hereunder is partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Government and the contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government.

(j) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the Cost Principles set forth in section XV of the Armed Services Procurement Regulation, as in effect on the date of this contract.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without expense to the Government, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

§ 597.1003 Short form termination clauses. In order to facilitate (a) the handling of small purchases of standard commercial items under fixed-price contracts above \$1,000 but under \$5,000, and (b) the obtaining of certain nonpersonal services such as rental of unreserved garage space, meals for inductees, laundry and dry-cleaning services, etc., the "short form" termination clauses set forth below are authorized for use in appropriate contracts.

§ 597.1003-1 Fixed-price supply contracts over \$1,000 and under \$5,000. The following clause may be inserted in fixed-price supply contracts over \$1,000 and under \$5,000 in lieu of any other termination for convenience of the Government clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The furnishing of supplies under this contract may be terminated, in whole or in part, without liability due to such termination on the part of the Government whenever the Contracting Officer shall determine that the termination of this contract is in the best interests of the Government. The Government shall be liable for only the contract price of the supplies furnished or en route prior to the effective date of termination. Termination of the furnishing of supplies hereunder shall be effected by the delivery to the contractor of a Notice of Termination 15 days prior to the date upon which the termination shall become effective.

§ 597.1003-2 Fixed-price nonpersonal service contracts. The following clause may be inserted in fixed-price nonpersonal service contracts, such as for the rental of unreserved garage space, meals for inductees, laundry and drycleaning services, etc., in lieu of any other termination for convenience of the Government clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The performance of work (services) under this contract may be terminated, in whole or in part, without liability due to such termination on the part of the Government whenever the Contracting Officer shall determine that termination of this contract is in the best interests of the Government. The Government shall be liable only for payment in accordance with the payment provisions of this contract for work (services) performed (furnished) prior to the effective date of termination. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination ----- days prior to the date upon which termination shall become effective.

PART 598—PATENTS AND COPYRIGHTS

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598.505-10	Contract numbering and distribution.
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598.506-1	Mandatory contract clauses.
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598.506-4	Release of past infringement clause.
598.506-5	Non-estoppel clause.
598.506-6	Contracts providing for the payment of a running royalty.
598.506-7	Assignments.
598.506-8	Unilateral contract form; gratuitous grant.
598.506-9	Bilateral contract form.

AUTHORITY: §§ 598.000 to 598.506-9 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 598.000 Scope of part. Supplementary to, but consistent with Part 408 of this title, this part sets forth administrative requirements, procedures, and other pertinent information in connection with (a) securing to the U. S. Government in various types of contracts appropriate patent rights and adequate protection against patent infringement risks; (b) use of copyright clauses in Army Establishment contracts; (c) adjustment of royalties payable by Army contractors and included in the cost price of Army contracts; (d) claims asserted by nationals of the indemnifying government for compensation for use or practice of inventions furnished the other government under the terms of the Patent Interchange Agreement between the United Kingdom Government and the United States; (e) claims arising out of the use by the Army or Army contractors of adversely owned patented and unpatented inventions and the settlement or other disposition of such claims; and (f) procurement by the Army Establishment of invention and patent rights, except as incident to the settlement of claims.

SUBPART A—PATENTS

§ 598.100 Scope of subpart. This subpart, excluding §§ 598.109, 598.111, and 598.150, sets forth administrative requirements and procedures in connection with (a) securing to the United States Government in various types of contracts appropriate patent rights and adequate protection against patent infringement risks, and (b) claims asserted by nationals of the indemnifying government for compensation for use or practice of inventions furnished the other government under the terms of the Patent Interchange Agreement between the United Kingdom Government and the United States.

§ 598.101 Definition; Chief, Patents Division, OJAG. The term "Chief, Patents Division, OJAG" means the Chief, Patents Division, Office of The Judge Advocate General, Department of the Army, Washington 25, D. C.

§ 598.101-1 Research or development contract. The term "experimental, developmental, or research work" shall be deemed to include any work for development of an item or method for the Government either as a sole object of the contract or to an extent beyond that nor-

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mally incident to the performance of a supply contract for the class of item involved.

§ 598.102 Notice and assistance. For proper action to be taken by technical services with respect to reports, received by them, of claims of patent infringement asserted against a contractor, or its subcontractor, see § 598.405-3.

§ 598.103 Reporting of royalties—(a) *Furnishing copy of reports.* The Contracting Officer shall furnish at least one copy of the royalty information, certificate, or report (whether positive or negative) received under the provisions of § 408.103 of this title to the Chief, Patents Division, OJAG.

(b) *Incomplete reports.* Where a contractor presents a royalty report which, upon its face, does not comply with the provisions of § 408.103 of this title, the Contracting Officer will make an effort to secure from the contractor a conforming report prior to forwarding said report as provided in paragraph (a) of this section.

(c) *Additional information to be furnished by Contracting Officer with copy of report.* If the contractor reports that a royalty has been or is to be paid, the Contracting Officer shall also furnish, at the time of submitting the above referred to copy of the royalty information or report received from the contractor, the following additional information:

(1) The type of contract, i. e. whether for Research or Development or for Supplies.

(2) The general subject matter of the contract, i. e. nomenclature or brief description of item of supply.

(3) The dollar amount of the contract.

(d) *Responsibility of Contracting Officer after furnishing copy of report.* After a copy of the report or certificate required by § 408.103 of this title and the additional information required by paragraph (c) of this section has been forwarded to the Chief, Patents Division, OJAG, the Contracting Officer has no further duties or responsibilities in the matter unless some particular further action is specifically requested by the Chief, Patents Division, OJAG.

§ 598.104 Classified contracts—(a) *Filing of patent applications.* Any delay in the processing of a request for permission to file a patent application in the United States Patent Office may result in the loss of substantial rights of the contractor. Accordingly, when a contractor submits a patent application, pursuant to the provisions of § 408.104 (a) of this title, for permission to file this application in the United States Patent Office, the Contracting Officer or his designee is charged with the duty of promptly informing the contractor whether this application may be so filed. In making such a decision or recommendation the cognizant section or branch shall make a survey of the proposed application to the extent necessary to determine whether or not, for security purposes, the filing in the United States Patent Office of an application should be denied, taking into consideration the fact that only under extraordinary cir-

cumstances of national security should the right to file a United States application be denied. The contractor has the right of appealing this decision direct to the Secretary of the Army. Whether or not a particular patent application should be placed under a Secrecy Order pursuant to Public Law 700, 34 U. S. C. 42, is a separate question which should be deferred until promptly after the application has been filed. In this latter connection, however, the Contracting Officer or his designee has the further duty, in all cases where the filing of an application is authorized, of securing the application serial number and filing date from the contractor and submitting such information to a proper Department of the Army representative promptly after the filing of the application in order that proper steps may be taken to place the application under a Secrecy Order if such action appears to be advisable.

(b) *Applications submitted under contracts classified confidential or lower.* Applications for United States patents submitted to the Contracting Officer pursuant to the provisions of paragraphs (c) and (d) of § 408.104 of this title should be promptly forwarded to the cognizant Department of the Army representative for the purpose of determining whether or not the application should be placed under a Secrecy Order in accordance with established procedures in this matter.

§ 598.105 Patent indemnification of Government by contractor—(a) *Standard commercial supplies.* (1) The term "standard commercial supplies" as used in the instructions set forth in § 408.105 of this title means supplies which are normally manufactured or supplied by a manufacturer or dealer for sale to the public in the commercial open market. It is intended to cover commodities which are readily procurable through normal trade channels and includes, by way of description but without limitation, "off the shelf" items, items listed in a manufacturer's standard stock catalog, or supplies for which there is a specified or established commercial price schedule with an offer to supply the same. It does not, as a rule, cover special items that are manufactured solely for the Government unless such items are commercially procurable.

(2) It is intended that, in accordance with the requirements of § 408.105 of this title, the indemnity article shall be used in the procurement of "standard commercial supplies" whether or not such supplies are "standard commercial" with the particular contractor who is awarded the contract. The determining criterion shall be whether or not the items of supply to be procured are "standard commercial" with any potential supplier (whether a bidder or not).

(b) *Exclusion of items from the operation of the indemnity clause.* (1) One or more of the listed items of a contract may not come within the meaning of the term "standard commercial supplies" although such item or items may contain components which do come within such meaning. If separation of the standard commercial components

and nonstandard components of the item is impractical or inexpedient, the item should be excluded in its entirety from the indemnity by listing it under paragraph (b) of § 408.105 of this title, and if all items of a contract come within this category, the entire indemnity clause may be omitted. If such separation is reasonably possible or expedient, however, only those components or parts of the items that are not "standard commercial" should be excluded and, accordingly, in such case, only the non-standard components of the item should be listed under paragraph (b) of the indemnity clause as items to be excluded from the operation of the indemnity.

(2) When it is to the interest of the Government to do so, devices, mechanisms, or materials other than those in the category of nonstandard commercial supplies may be excluded from the indemnity by and with the approval of the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch). Requests for such exclusion should be accompanied by a full statement of facts supporting the request.

(3) When it is in the interest of the Government to do so, specific patents and/or applications for patent may be excluded from the indemnity by and with the approval of the Assistant Chief of Staff, G-4 (Chief, Current Procurement Branch).

(c) *Indemnification of contractor by the Government.* No provision whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement shall be included in any contract. Ordinarily any demands of a contractor in this respect can be satisfied by the elimination of the patent indemnity clause (when authorized by § 408.105 of this title) and insertion of the authorization and consent clause (§ 408.106 of this title).

§ 598.106 Authorization and consent. This clause is intended merely to set forth affirmatively in a contract the authorization and consent of the Government without which the contractor would, by reason of the law as laid down by Statute and the Court of Claims with regard to patent infringement by or for the Government, be liable to direct suit and injunctive action in the performance of the Government contract. Its use, therefore, is authorized, as set forth in the instructions to § 408.106 of this title, in any contract. Any deviation from the clause as set forth in § 408.106 of this title, or the footnote thereto, however, may enlarge the liability of the Government unless a proper indemnity clause is included in the contract, and strict adherence to § 408.106 of this title is, accordingly, mandatory unless a deviation as provided in § 590.108 of this chapter is obtained.

§ 598.107 Patent rights under research or development contracts.

§ 598.107-1 License under foreground patents—(a) *Exclusion of invention from general license.* Where special circumstances exist (of which representative examples are set forth in the instructions to § 408.107-1 of this title)

for the exclusion of any invention or material from a general license to the Government, the Contracting Officer shall submit the proposal to the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), with his recommendations and detailed reasons therefor.

(b) *Submission of disclosures.* With respect to technical services which do not maintain patent prosecution facilities, copies of contractor's reports furnished in accordance with the provisions of paragraph (c) of § 408.107-1 of this title disclosing inventions and electing not to file patent applications thereon, together with a complete disclosure of each such invention, shall be furnished to the Chief, Patents Division, OJAG. A statement shall be furnished by the technical service as to each such invention evaluating the invention from the standpoint of military worth or usefulness and whether it is likely to be used within the Army Establishment.

§ 598.107-2 *Title to foreground patents*—(a) *Use of patent title clause.* The use of the patent title clause is appropriate whenever acquisition of title by the Government is desirable and warranted by special circumstances in accordance with the provisions of § 408.107-2 of this title.

(b) *Processing of material received under § 408.107-2 (c) of this title.* All disclosures, instruments, reports and the like required to be delivered to the Government pursuant to paragraph (c) of the clause set forth in § 408.107-2 of this title should be processed in the manner prescribed in § 598.107-1 (a).

§ 598.107-3 *Reproduction rights under background patents*—(a) *General policy.* Reproduction rights (limited royalty-free license) under contractor's background patents, in addition to title or license under foreground patents as provided in §§ 408.107-1 and 408.107-2 of this title should be requested in any research or development contract where in the opinion of the Contracting Officer there are equitable or other circumstances justifying such request.

(b) *Consideration for administration of the general policy.* In applying the foregoing policy with respect to requesting reproduction rights under contractor's background patents the Contracting Officer shall be governed by the following considerations:

(1) *Under formal advertising.* The reproduction rights clause should not be used in invitations for bids issued under formal advertising in the procurement of supplies normally bought and sold commercially in the open market.

(2) *Negotiated contracts.* In negotiated contracts the question of the acquisition of background rights by the Government is a matter for full and free bargaining between the contracting parties, with the Contracting Officer taking into account the equitable circumstances supporting the Government's request for reproduction rights under the background patents.

§ 598.107-5 *Contracts relating to atomic energy.* The patent rights provision set forth in § 408.107-5 of this

title shall be inserted as part of the patent rights clause set forth in § 408.107-1 of this title in all research or development contracts relating to atomic energy.

(a) Disclosures of inventions relating to atomic energy furnished by any contractor shall be forwarded to the Chief, Patents Division, OJAG, for referral to the United States Atomic Energy Commission.

(b) Requests for deviation from the provisions set forth in § 408.107-5 of this title shall be forwarded to the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) for referral to the United States Atomic Energy Commission for determination by it as to whether the provision must be included in the contract or whether such provision may be modified.

§ 598.108 *Follow-up of patent rights.* An appropriate system shall be maintained by each technical service policing the disclosure provisions of the patent rights clauses included in research or development contracts by means of which inventions made under such contracts may be identified, and formal agreements evidencing the Government's rights under such invention duly obtained. In this connection see the withholding of a portion of the final payment provision contained in § 408.107-1 (e) of this title.

§ 598.109 *Adjustment of royalties.* See Subpart C of this part relating to the adjustment of royalties for the use of inventions for the benefit of the United States.

§ 598.110 *Patent Interchange Agreement and patent problems relating to Mutual Defense Assistance Act of 1949*—

(a) *General.* Under the date of 24 August 1942, an agreement was entered into between the United States of America and the United Kingdom with relation to the interchange of patent rights, information, inventions, designs or processes (Executive Agreement Series 268). This agreement, titled "Agreement with the United Kingdom for the Interchange of Patent Rights and Industrial Information," was terminated on April 8, 1946, but without prejudice to any liability which then had occurred or which might thereafter arise pursuant to certain continuing obligations undertaken by each Government.

(b) *Terms of agreement.* The following is a summary of the terms of the Agreement remaining in effect:

(1) Each Government agrees to indemnify and save harmless the other Government against claims asserted by nationals of the indemnifying Government for compensation for the use or practice of inventions furnished the other Government under the terms of the *Patent Interchange Agreement*. The obligations of the United States are limited to claims of which the Government of the United States is notified before July 1, 1949. There is no time limit running to the obligations of the British Government.

(2) Each Government agrees to notify the other Government as soon as practicable after receiving notice of any claim

by which the liability might fall upon the other Government.

(3) Each Government will give to the other Government all possible information and other assistance required in connection with computing any payments to be made to nationals of the other Government with respect to the use of their patent rights, information, inventions, designs, or processes.

(c) *Questions of policy or procedure under Agreements.* All questions of policy or procedure arising under the Agreement shall be referred to the Chief, Patents Division, OJAG.

(d) *Patent rights as the subject of reciprocal aid by lend-lease beneficiary governments other than the United Kingdom.* (1) Lend-Lease Settlement Agreements have been negotiated by the State Department with France, Belgium, Luxembourg, Norway, and the Netherlands containing provisions generally to the effect that the respective governments will assume the obligations of the United States or its war contractors with respect to claims of patent infringement or other liability for the use of inventions made against the United States by nationals of the respective governments, or to pay royalties to nationals of the respective governments, which claims or royalties are in connection with war production.

(2) Heads of Procuring Activities will report to the Chief, Patents Division, OJAG any patent liability of the United States or its war contractors to nationals of any other lend-lease beneficiary country in sufficient detail to enable that office to base a request to the State Department to make provisions for the assumption by the Government concerned as an item of reciprocal aid of the patent liability involved.

(3) In no event shall any contract of settlement of patent infringement liability, or of other liability for use of inventions, be made with a national of a lend-lease beneficiary government, nor shall payment be authorized of royalties either by the Department or by Department contractors to a national of a lend-lease beneficiary government, without first obtaining a written approval of the Chief, Patents Division, OJAG.

(e) *Proprietary rights in connection with the Mutual Defense Assistance Act of 1949.* The bilateral agreements between the United States and MDAP countries contain a clause to the effect that the two contracting governments will negotiate appropriate arrangements respecting responsibility for claims for the use or infringement of inventions and proprietary information. It is anticipated that these arrangements will be similar to the Patent Interchange Agreement with the British Government. These matters have not progressed to a point where definitive rules and regulations have been formulated. In implementation of the program all claims for the use and infringement of such inventions or proprietary information will be referred to the Chief, Patents Division, OJAG.

§ 598.111 *Processing of infringement claims.* See Subpart D of this part relating to investigation and disposition of claims for the use of inventions by or on

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behalf of the Government, and agreements in settlement of such claims.

§ 598.150 Procurement of invention and patent rights. See Subpart E of this part pertaining to the procurement of invention and patent rights (except as an incident to the settlement of claims for the use of inventions which is provided for in Subpart D of this part), and agreements for the procurement of such rights.

SUBPART B—COPYRIGHTS

§ 598.200 Scope of subpart. This subpart sets forth the administrative requirements and procedures and other pertinent information relating to use of copyright clauses in Army Establishment contracts.

§ 598.202 License under copyrightable material. No deviation or modification shall be made in the clause set forth in § 408.202 of this title without the approval of the Assistant Chief of Staff, G-4 Department of the Army (Chief, Current Procurement Branch).

§ 598.204 Contracts for motion pictures. (a) The contract clause set forth in § 408.204 of this title shall be used in all contracts for the production of motion pictures, and in all contracts for the preparation (for use in connection with motion pictures) of scripts, translations, sound tracks, musical compositions, or any other copyrightable material. Any request for deviation from this section shall be made as set forth in § 598.202.

(b) In all contracts for the procurement of existing motion pictures, the following instructions apply as to use of the contract clause set forth in § 408.204 of this title.

(1) Paragraph (a) may be modified or omitted by the Procuring Activity.

(2) Paragraph (b) may be modified by the technical service concerned only to the extent of limiting the scope of the license granted by this section to that scope which is consistent with the purposes for which the motion picture covered by the contract is being procured. Examples of such restricted rights are:

(i) Limitation as to the type of audience.

(ii) Limitation as to the geographical location.

(iii) Limitation as to time.

(3) Paragraph (c) of § 408.204 of this title should be used in this type of contract. It may, however, be modified to the extent that the coverage of the indemnity is coextensive with the rights acquired under the modification permitted by subparagraph (2) of this paragraph.

(c) In all contracts for the procurement of a motion picture which is a modification (through the addition of subject matter specified by the contract and not already in existence) of an existing motion picture, the instructions given in paragraph (b) (2) and (3) of this section apply. In this type of contract paragraph (a) of the contract clause set forth in § 408.204 of this title shall be used without modification, except that the word "copyrightable" may, at the discretion of the technical

service, be inserted before the word "material" in the first line of this paragraph.

SUBPART C—ADJUSTMENT OF ROYALTIES

§ 598.300 Scope of subpart. This subpart sets forth pertinent information with respect to the adjustment of royalties for the use of inventions which are charged as an incident of cost in Department of the Army procurement. (See § 408.109 of this title and § 598.109 pertaining to this subject.) It implements Subchapter A, Chapter IV of this title generally rather than a specific part or section thereof.

§ 598.301 Adjustment of royalties for the use of inventions.

§ 598.301-1 Definitions. Where used in this subpart, the following terms have the meanings here assigned to them:

(a) "The Act" means the Royalty Adjustment Act 1942 (Pub. Law 768, 77th Cong.; 25 U. S. C. 89-96).

(b) "Delegate" means the offices, boards, agents, and persons specified in § 598.301-10, together with any other office, board, or individual to whom any of the powers, duties, and authorities of the Secretary of the Army under the Act have been or may be delegated.

§ 598.301-2 Basic statute. The act makes provision for adjusting royalties for the use of inventions for the benefit of the United States, in aid of the prosecution of the war, and for other purposes. Sections 598.301-3 to 598.301-8, inclusive, contain a summary of the provisions of the act as applied to the Army Establishment.

§ 598.301-3 Applicability and notice. Whenever an invention, whether patented or unpatented, is manufactured, used, sold, or otherwise disposed of for the United States under the conditions set forth in the act and the license includes provisions for the payment of royalties, the rates or amounts of which are believed to be unreasonable or excessive by the Secretary of the Army, the Secretary of the Army shall give notice of such fact to the licensor and the licensee. By definition, the manufacture, use, sale, or other disposition of an invention, whether patented or unpatented, by a contractor, subcontractor, or any person, firm, or corporation for the Government and with the authorization or consent of the Government is construed as manufacture, use, sale, or other disposition for the United States.

§ 598.301-4 Fixing of rates and order. The act further provides that within a reasonable time after the effective date of the notice, in no event less than ten days, the Secretary of the Army shall by order fix and specify such rates or amounts of royalties, if any, as he shall determine are fair and just, taking into account the conditions of wartime production, and shall authorize the payment thereof by the licensee to the licensor on account of such manufacture, use, sale, or other disposition. Either the licensor or the licensee may, if he so requests within ten days from the effective date of the notice, present within thirty days from the date of his request,

in writing or in person, any facts or circumstances which may in his opinion have a bearing upon the rates or amount of royalties, if any, to be determined, fixed, and specified as aforesaid. Any order fixing the rates and amounts of any royalties shall be issued within a reasonable time after such presentation.

§ 598.301-5 Prohibition against payment of excessive royalties. The licensee shall not after the effective date of the notice (upon receipt of notice, or five days after the mailing thereof, whichever date is earlier) pay to the licensor, nor charge directly or indirectly to the United States, a royalty in excess of that subsequently specified in the order. It is provided that, whenever a reduction in the rates or amounts of royalties is effected by order, the reduction shall inure to the benefit of the Government by way of a corresponding reduction in the contract price to be paid directly or indirectly for such manufacture, use, sale, or other disposition of such inventions, or by way of refund if already paid to the licensee.

§ 598.301-6 Remedies of licensor. The act contains certain provisions as to the remedies of the licensor, which, in general, grant him a cause of action against the United States in the Court of Claims or a District Court of the United States.

§ 598.301-7 Settlement of claims. The Secretary of the Army is authorized, before suit has been instituted against the United States, to enter into an agreement with the owner or licensor of an invention, in full settlement and compromise of any claim accruing under the provisions of the act or any other law, and for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of said invention.

§ 598.301-8 Authority of Secretary of the Army and Under Secretary of the Army to delegate powers and issue regulations under act. The Secretary of the Army is authorized in his discretion and under such rules and regulations as he may prescribe, to delegate any powers, duties and authorities conferred by the act to such qualified and responsible officers, boards, agents or persons as he may designate or appoint. He is also authorized to prescribe such rules and regulations and to require such information as may be necessary and proper to carry out the provisions of the act. The Secretary of the Army has delegated and assigned his powers, duties, and authorities under the act to the Under Secretary of the Army including the authority to prescribe such rules and regulations as the Under Secretary of the Army may from time to time deem proper under the act and the authority to redelegate in whole or in part, such powers, duties, and authorities to such qualified and responsible officers, boards, or employees as he may designate in the Department of the Army, and to authorize such officers, boards, or employees to make or authorize successive redelegations of such powers, duties, and authorities.

§ 598.301-9 Powers, duties, and authorities under the act which have been delegated by the Under Secretary of the Army with limited authority of redelegation. The Under Secretary of the Army has delegated to the Assistant Chief of Staff, G-4 (with right of redeligation to the Chief, Procurement Division, Office of Assistant Chief of Staff, G-4, and through him to the Chief, Current Procurement Branch, Office of Assistant Chief of Staff, G-4) the power and authority to designate, and appoint, and to revoke any designation and appointment of, any commissioned officer of the Army within his command, or any civilian employee of the Department of the Army within his jurisdiction, whom he deems to be responsible and qualified by reason of having had substantial business or legal experience in procurement or patent matters, for the exercise by such officer or employee, either individually or as a member of a Royalty Adjustment Board, of such of the powers, duties and authorities conferred by the act upon the Secretary of the Army as are set forth in the paragraphs (a), (b), (c), and (d) of this section, the exercise thereof to be pursuant to such rules and regulations under the act as may from time to time be prescribed by the Under Secretary of the Army:

(a) To determine that notice should be given and to give notice of the fact that the rates or amounts of royalties are believed to be unreasonable or excessive; and to withdraw any such notice previously given by the delegate or by a delegate of lower rank in his service under certain circumstances.

(b) After notice, to receive and hear such facts and circumstances as may be presented by the licensee or licensor, and such other facts and circumstances as are relevant to a determination of a fair and just royalty.

(c) To fix and specify, by order, fair and just rates or amounts of royalties, and to authorize the payment thereof, if any royalty be allowed, by the licensee to the licensor, subject, however, to the approval of such order by the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4.

(d) To execute contracts on behalf of the United States, before suit against the United States has been instituted, with the owner or licensor of an invention, or of the Letters Patent therefor, effecting a voluntary adjustment of royalties charged or chargeable to the United States, or in settlement and compromise of any claim against the United States accruing to such owner or licensor under the provisions of the act or any other law by reason of the manufacture, use, sale, or other disposition of an invention or for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of such invention, subject, however, to the approval of the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4, in each case under certain circumstances, including those stated in § 598.405-12.

The foregoing power and authority of designation and appointment has been redelegated to the Chief, Procurement

Division, Office of the Assistant Chief of Staff, G-4, and through him to the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4.

§ 598.301-10 Existing delegations under paragraphs (a), (b), (c), and (d) of § 598.301-9. (a) The powers, duties, and

authorities described in paragraphs (a), (b), (c), and (d) of § 598.301-9 have been delegated by the Under Secretary of the Army or by the officers designated in § 598.301-9 to each of the following offices, boards, agents, or persons as indicated in the following tabulation:

Delegate	Powers, duties and authorities described in § 598.301-9			
	(a)	(b)	(c)	(d)
Chiefs of the Technical Services.....	X	X	X	X
Royalty Board, Office of the Chief of Ordnance.....	X	X	X	X
All District Chiefs of Ordnance Procurement Districts.....				X
All Deputy District Chiefs of Ordnance Procurement Districts.....				X
Commanding Officer, Frankford Ordnance Arsenal.....				X
Commanding Officer, Picatinny Ordnance Arsenal.....				X
Commanding Officer, Rock Island Ordnance Arsenal.....				X
Commanding Officer, Springfield Ordnance Armory.....				X
Commanding Officer, Watertown Ordnance Arsenal.....				X
Commanding Officer, Watervliet Ordnance Arsenal.....				X
Chief, Legal Division, Office of the Chief Signal Officer.....	X	X	X	X
Royalty Adjustment Board, Office of The Quartermaster General.....	X	X	X	X
Royalty Adjustment Board, Office of the Chief of Engineers.....	X	X		X
Royalty Adjustment Board, Office of The Surgeon General.....	X	X		X
Chief, Legal Division, Office of the Chief of Transportation.....	X	X		

(b) If the chief of a technical service desires that any of the powers, duties, and authorities set forth in § 598.301-9 be further delegated to any officer or employee within his command or jurisdiction, or that a board to receive such delegation be created within his service or command, a request to that effect may be transmitted to the appropriate office specified in § 598.301-9. Such request shall include the name, rank or grade, and a brief statement of qualifications with respect to each officer or employee to whom the delegation is desired.

(c) Where any of the powers, duties, and authorities set forth in § 598.301-9 have been or are hereafter delegated to a board, the said board shall, unless otherwise provided in the instrument of delegation, consist of three officers or employees of the service or command concerned, who shall be designated and appointed as provided in § 598.301-9. Unless otherwise provided in the instrument of delegation (1) a majority of said board shall determine its action, (2) any instrument or contract whatsoever evidencing action taken by the board may be signed in its name by any member of the board, and (3) any two members of such board shall constitute a quorum.

§ 598.301-11 Duties of the technical services. Subject to the applicable rules and regulations, the chiefs of the technical services are, in matters properly before them and acting under the direction of the Under Secretary of the Army, under the duty of causing the powers, duties and authorities delegated under the act to be exercised in such manner and at such times as may be necessary to prevent unreasonable or excessive royalties from being charged to the Department of the Army. This duty may be discharged pursuant to such instructions as may be issued by the chiefs of the technical services for the guidance of their respective services and delegates therein.

§ 598.301-12 Source of information relating to procedure. Whenever a technical service has reason to believe that the amount of royalties being assessed against any of its procurement is exces-

sive, advice may be obtained as to the procedure to follow in order that the powers and authority of the act may be utilized, by communicating with the Chief, Patents Division, OJAG.

SUBPART D—PROCESSING OF INFRINGEMENT CLAIMS

§ 598.400 Scope of subpart. This subpart sets forth the policy of the Department, applicable statutes, administrative requirements and procedures, and other pertinent information relative to (a) investigation and disposition, by settlement or otherwise, of actual and potential claims for compensation for the use of adversely owned patented or unpatented inventions, and (b) contracts or agreements in settlement of such claims, including suggested contract forms and mandatory and suggested articles to be used in such contracts. (See § 408.111 of this title and § 598.111 pertaining to this subject.) This subpart relates to claims by both United States and foreign claimants, except claims presented by nationals of the United Kingdom under the Patent Interchange Agreement, of lend-lease beneficiary countries, and of countries whose Governments are within the scope of the Mutual Defense Assistance Program, for which see § 598.110. It implements Subchapter A, Chapter IV of this title generally rather than a specific part or section thereof.

§ 598.401 Definitions. As used in this subpart, the terms in §§ 598.401-1 through 598.401-3 have the meanings set forth therein.

§ 598.401-1 Chief, Patents Division, OJAG. The term "Chief, Patents Division, OJAG" means the Chief, Patents Division, Office of The Judge Advocate General.

§ 598.401-2 Delegate. The term "Delegate" means any office, board, agency, or officer to whom the powers, duties, and authorities set forth in § 598.404-2 have been delegated.

§ 598.401-3 Such Claim. The terms "Such Claim" and "Such a Claim" mean a claim against the United States which has in fact been asserted or a claim

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(based upon actual past procurement and not contemplated procurement) which may reasonably be anticipated will be asserted, under any of the applicable statutes (see §§ 598.402-1, 598.402-3, and 598.402-4), for compensation for alleged use of inventions by or for the Army Establishment.

§ 598.402 Applicable statutes.

§ 598.402-1 The Act of 1948. The act of June 25, 1948, as amended (28 U. S. C. 1498) (hereinafter called "the act of 1948") provides that wherever an invention covered by a patent of the United States is without license or other right used or manufactured by the United States, or by any person, firm or corporation for the United States and with its authorization and consent, the patent owner's remedy shall (except as hereinafter stated) be by suit against the United States in the Court of Claims for recovery of his reasonable and entire compensation for such use or manufacture. The benefits of the foregoing statute do not inure to any patentee or the assignee of any patentee who when he makes Such Claim is in the employment or service of the Government, nor does the foregoing statute apply with respect to any patent based upon an invention made during the time the inventor was in the employment or service of the Government.

§ 598.402-2 The Patent Marking Statute. Section 4900, Revised Statutes, as amended (35 U. S. C. 49) (hereinafter called "the Patent Marking Statute"), precludes the recovery by a patent owner of damages or profits for infringement occurring prior to (a) the date of marking the patented article with the word "Patent" together with the number of the patent or with the word "Patented" and the day and year the patent was granted or (b) the date on which the patent owner notified the alleged infringer of the claimed infringement (whichever date is earlier), except (1) in the case of a patent exclusively for a process or (2) in the event neither the owner nor any licensee of the owner has made or sold the patented article.

§ 598.402-3 The Secrecy Order Act. The act of October 6, 1917, as amended (35 U. S. C. 42) (hereinafter called "the Secrecy Order Act"), provides that the owner of a patent application, which had been ordered by the Commissioner of Patents to be kept secret, who has faithfully obeyed such order, and who has tendered his invention to the Government for its use, shall, if and when he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

§ 598.402-4 The Air Corps Act. The act of July 2, 1926, as amended (10 U. S. C. 310 (i)) (hereinafter called "the Air Corps Act"), provides that whenever a design, whether or not inventive in character, relating to aircraft or any components thereof, is used or manufactured by or for any Department of the Government without just compensation,

the owner of such design may, within four years from the date of such use, file suit against the United States in the Court of Claims for recovery of his reasonable and entire compensation for such use and manufacture.

§ 598.402-5 The Act Requiring Reports to the Attorney General. Section 188, Revised Statutes (5 U. S. C. 91) (hereinafter called "the Act Requiring Reports to the Attorney General"), requires that a department, or the officer or agent of a department, which is authorized to adjust a claim, shall, after suit has been brought in the Court of Claims and upon request by the Attorney General, furnish the Attorney General without delay with a full statement, in writing, of all facts, circumstances, and evidence pertinent to the claim in the possession or knowledge of such department, officer, or agent.

§ 598.402-6 The Royalty Adjustment Act. The act of October 31, 1942 (35 U. S. C. 91), known as "the Royalty Adjustment Act," provides that the head of any department or agency of the Government, which has ordered, authorized, or consented to the manufacture, use, sale, or other disposition of an invention (whether patented or unpatented) by or for the Government, is authorized to enter into an agreement with the owner thereof, before suit against the United States has been instituted, in full settlement and compromise of any claims against the United States accruing by reason of such manufacture, use, sale, or other disposition of the invention. This statute grants power and authority to settle claims or liabilities arising under the acts referred to in §§ 598.402-1 and 598.402-3 above, and to settle claims or liabilities arising under the act referred to in § 598.402-4, insofar as they are based upon a design which is believed to be inventive in character.

§ 598.402-7 Section 3477, Revised Statutes. Section 3477, Revised Statutes, as amended (31 U. S. C. 203), provides that all transfers and assignments of any claim (except certain contract claims) upon the United States are absolutely null and void unless made, among other things, after the allowance of the claim, the ascertainment of the amount due and the issuing of a warrant for the payment thereof. In view of certain decisions construing the statute, its provisions will, so far only as concerns claims made under the statutes referred to in §§ 598.402-1, 598.402-3, and 598.402-4, be deemed—

(a) Inapplicable to claims arising under the Act of 1948 for compensation on account of articles manufactured for the United States, and articles and methods used in production for the United States (except articles made by the United States).

(b) Applicable to all other claims arising under the statutes referred to in §§ 598.402-1, 598.402-3, and 598.402-4, such, for example, as claims under the Act of 1948 for compensation on account of articles manufactured by the United States, or claims under the Secrecy Order Act or the Air Corps Act

for compensation on account of articles manufactured by or for the United States.

§ 598.403 General policy. In order to maintain the good will of U. S. industry, to encourage invention and the development of the scientific arts related to the National Defense, to dispose of past and avoid future infringement of privately owned rights in inventions and under U. S. Letters Patent, and to avoid litigation and attendant nonproductive time, it is the policy of the Department to settle claims for compensation for past infringement of such invention rights, and also to obtain necessary rights with respect to such inventions in view of contemplated future Departmental procurement, where it is in the Government's interest to do so and when such rights can be obtained at not more than their fair value. To this end, an investigation of each Such Claim shall be made in accordance with the instructions and procedures set forth in §§ 598.405-3 through 598.405-7 hereof. If any patent upon which Such a Claim is based is found to be infringed and is believed to be valid and enforceable, and it is deemed advisable by the Delegate, efforts to settle Such Claim, before suit against the United States has been instituted, shall be made in accordance with the instructions and procedures set forth in §§ 598.405-8 through 598.405-14. Coordination with the Departments of the Navy and the Air Force in the processing and final disposition of each Such Claim will be effected by the Chief, Patents Division, to such extent as is deemed necessary to avoid unnecessary duplication of work on identical claims received in the Military Establishment, and to settle such of said claims as are valid in a manner in keeping with the interests of each of said Departments involved.

§ 598.404 Authority and delegation.

§ 598.404-1 Statutory authority of the Secretary of the Army. The Secretary is authorized by section 5 of the act of October 31, 1942 (the Royalty Adjustment Act), in his discretion and under such rules and regulations as he may prescribe, to delegate any powers, duties, and authorities conferred by the act to such qualified and responsible officers, boards, agents, or persons as he may designate or appoint. He is also authorized to prescribe such rules and regulations and to require such information as may be necessary and proper to carry out the provisions of the act. Pursuant to the foregoing, the Secretary of the Army has prescribed the rules and regulations set forth in this subpart and in Subpart C of this part.

§ 598.404-2 Delegation of authority. The Secretary of the Army, or the officers to whom he has delegated the authority, has delegated to the chiefs of the technical services and to certain other officers, boards and persons (herein called "Delegates"), as identified and listed in § 598.301-10, the following power and authority under section 3 of the act of October 31, 1942 (the Royalty Adjustment Act):

To execute contracts on behalf of the United States before suit against the United States has been instituted, with the owner or licensor of an invention, or of the Letters Patent therefor, effecting a voluntary adjustment of royalties charged or chargeable to the United States, or in settlement and compromise of any claim against the United States accruing to such owner or licensor under the provisions of the Act or any other law by reason of the manufacture, use, sale, or other disposition of an invention or for compensation to be paid such owner or licensor based upon future manufacture, use, sale, or other disposition of such invention.

subject, however, to the approval of the Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, in each case where that approval is required by § 598.405-12.

§ 598.405 Prescribed regulations.

§ 598.405-1 Appointment and composition of boards. (a) Where the power and authority set forth in §§ 598.404 through 598.404-2 has been or is hereafter delegated to a board, the said board shall, unless otherwise provided in the instrument of delegation, consist of three officers or employees of the Procuring Activity concerned, who shall be designated by name. Unless otherwise provided in the instrument of delegation, (1) a majority of said board shall determine its action, (2) any instrument or contract whatsoever evidencing action taken by the board may be signed in its name by any member of the board, and (3) any two members of such board shall constitute a quorum.

(b) Appointment of all such boards or of new personnel to such boards shall be upon request made to the officer having appointing authority (see § 598.301-9). Such request shall include the name, rank or grade, and a brief statement of qualifications with respect to each officer or employee to whom the delegation is desired. The appointing officer may appoint any commissioned officer of the Department within his command, or any civilian employee in the Department within his jurisdiction, whom he deems to be responsible and qualified by reason of having had substantial business or legal experience in procurement or patent matters.

(c) The name of the board shall be specified in the request for the appointment, and in the instrument appointing such board.

§ 598.405-2 Duties of chiefs of technical services. (a) The chief of each technical service, or such other Delegate within his service as he may designate, is charged with the duty of taking appropriate action with respect to each Such Claim pertaining to the procurement responsibilities of his service promptly after knowledge thereof is brought to his attention where either Such a Claim has been made or may be reasonably anticipated. Such action includes the following:

(1) Writing the claimant or his representative acknowledging receipt of the communication in which Such Claim is asserted. An authorized form of acknowledgement is set forth in § 598.405-4.

(2) Transmitting direct to the Chief, Patents Division, OJAG, a copy of the communication in which any Such Claim is asserted or reported.

(3) Requesting clearance from the Chief, Patents Division, OJAG, to investigate and settle each Such Claim pursuant to § 598.405-5.

(4) Investigating each Such Claim upon clearance from the Chief, Patents Division, OJAG, and, if deemed appropriate by the Delegate, settling the same pursuant to §§ 598.405-8 through 598.405-14.

(5) Preparing and transmitting to the Chief, Patents Division, OJAG, pursuant to § 598.405-6, a report containing the full statements required by the act requiring reports to the Attorney General (see § 598.402-5) with respect to each Such Claim in which no settlement is effected.

(6) Making the required distribution of each contract of settlement or partial settlement of Such Claim pursuant to § 598.405-14.

(b) The actions as set forth in paragraph (a) of this section, and wherever referred to in these sections, may be performed by an authorized representative of the Delegate, except for the execution of contracts entered into pursuant to paragraph (a) (4) of this section and the execution of reports prepared pursuant to paragraph (a) (5) of this section.

§ 598.405-3 Reporting of claims. The chief of each technical service shall issue necessary instructions to all officers and employees of his service to provide for prompt submission, to the chief legal or patent officer in the headquarters of his service, of (a) all communications received in his service asserting Such Claims, and (b) all reports received by Contracting Officers in his service from contractors under § 598.102 of Such Claims relating to the alleged manufacture, use, sale, or other disposition of inventions by or for the Government. All communications asserting claims received by other agencies of the Department shall be sent to the Chief, Patents Division, OJAG, who will forward the same for processing under this subpart, to the chief legal or patent officer of the technical service which appears to have the dominant interest in the claim.

§ 598.405-4 Correspondence with claimant. No Delegate shall concede in writing, addressed to any claimant, potential claimant, or the representative of either, the merit or value of Such Claim, except so far as such concession may be embodied in an agreement executed by the United States in settlement and compromise thereof in compliance with the pertinent sections of this subpart. This is in keeping with the policy of the Department of the Army to furnish no information which might be used as the basis or in support of a claim against the Government. Upon receipt of a notice of infringement, the Delegate shall acknowledge receipt thereof. The following form of letter is authorized for that purpose, subject to such modifications as may be required by the nature of the claim presented:

[Letterhead of Delegate]

[Date]

JOHN DOE,
Title Guarantee Building,
Miami, Florida.

DEAR SIR:

Your letter to _____ dated _____, 19_____, stating that United States Letters Patent No. _____, granted (date of patent), to (patentee's full name), of (city and state), for "(title of invention)", is (are) infringed by (item or process allegedly being used by the Department of the Army), has been referred to this office for necessary action and direct reply.

I am directed by the Secretary of the Army to inform you that the matter presented in your letter will be carefully investigated and that you will be informed of the Department of the Army's conclusions upon completion of such investigation.

To aid in such investigation, it is requested that you furnish this office as promptly as possible the following information and material:

(1) Copy of the file wrapper and contents of the patent(s) in question.

(2) Copies of all patents and publications cited by the Patent Office during the prosecution of the application(s) for such patent(s).

(3) The names and addresses of licensees, if any.

(4) Copies of license agreements.

(5) Brief statement of any litigation in which the patent(s) have been or are now involved.

(6) List of all notices of infringement which you have sent to alleged infringers of the patent (except the alleged infringers included in your statement of litigation), including but not limited to any other departments and agencies of the Government.

Sincerely yours,

(Signature of Delegate)

§ 598.405-5 Clearance to investigate.

(a) Promptly after receipt of a notice or report of Such a Claim the Delegate shall request in writing, from the Chief, Patents Division, OJAG, clearance to investigate and to settle the same. Insofar as practicable, one Delegate shall represent the Department in the investigation and settlement of each Such Claim.

(b) Each request for clearance shall be submitted in eight copies and shall include the following:

(1) The name and address of each claimant or prospective claimant.

(2) The name and address of each contractor and subcontractor who is believed, to the extent disclosed by a cursory search in the headquarters of the Delegate, to have performed the alleged infringing acts.

(3) The number and date of each patent, and the serial number and filing date of each patent application involved.

(4) Description of the alleged infringing subject matter in sufficient detail to permit other procuring services to determine therefrom whether they have an interest in the matter.

(5) A copy of the communication from the claimant, if any.

(c) The Chief, Patents Division, OJAG, upon receipt of the request for clearance, shall determine (1) from his files, (2) from the Government Register of Patent Rights, U. S. Patent Office

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(provided for in Executive Order No. 9424, Feb. 18, 1944, 9 F. R. 1959), and (3) from the Department of Justice, whether the Department of the Army or any other department or agency of the Government has investigated or settled, or received a report or notice of, a claim pertaining to the same subject matter, and shall then grant such clearance in writing as appears proper.

(d) Upon granting of the clearance by the Chief, Patents Division, the Delegate granted clearance shall, in accordance with § 598.405-2 (a) (4), proceed on behalf of the Department of the Army to investigate the claim, and, if deemed appropriate by him, to settle the same pursuant to §§ 598.405-8 through 598.405-14.

(e) The Chief, Patents Division, OJAG, shall send copies of said request for clearance and of said clearance to the chief patent officer (or the chief legal officer, if there be no chief patent officer) of each of the Procuring Activities of the Department, except those which clearly would have no interest in or information pertinent to the matter. Each such officer to whom said copies are sent shall promptly investigate the procurement in his service and notify the Delegate to whom clearance has been issued of the interest, if any, of his service in the matter and of any pertinent information contained in his files. Negative reports should be made when justified by the facts. Where such report by a procuring service to the said Delegate refers to procurement of that service which is pertinent to Such Claim, the report shall include a description (with drawings, where necessary), of the procured matériel sufficient to enable the Delegate to determine whether such procurement constitutes infringement under Such Claim, together with said officer's opinion upon the question of infringement and the reasons therefor. Any chief patent or legal officer notified of the granting of clearance to a Delegate, who fails to make the above-mentioned report promptly to such Delegate shall be requested in writing by the Delegate to render such report. No claim shall be settled by a Delegate or a final report upon a nonsettled claim rendered pursuant to § 598.405-6 until reports are received by said Delegate from each chief patent or legal officer notified of the granting of the clearance, unless adequate explanation for the absence of any such report is presented.

§ 598.405-6 Final report by delegate where no settlement of claim is made. A final written report (in duplicate) of the results of the investigation made on behalf of the Department, including recommendations and conclusions of the Delegate on behalf of the Department will be made by him to the Chief, Patents Division, OJAG, with respect to each Such Claim in which (a) settlement is believed to be inadvisable, or (b) the Delegate has been unable to settle upon terms deemed reasonable by him, whether or not Such Claim is covered by an indemnity agreement. Each such report shall be clearly marked "Legal Memorandum for the Guidance of Administrative Officials," and, in addition, shall bear

such military classification marking, if any, as shall be deemed appropriate by the technical service of the Delegate in accordance with the provisions of AR 380-5 (see Part 505 of this chapter), as amended. A copy of such report shall be forwarded by the Delegate to the Heads of all the interested Procuring Activities concurrently with transmittal of the original (and duplicate) to the Chief, Patents Division, OJAG. This final report, which is to serve as a basis for compliance with the Act requiring reports to the Attorney General, i. e., section 188, Revised Statutes (see § 598.402-5), will include, so far as is relevant and practicable, all of the following information:

(a) Numbers and dates of all contracts and subcontracts for procurement of the item in question, together with the name and address of each contractor and subcontractor concerned, and the text of each contractor's agreement, if any, to indemnify the Government against liability for infringement, or a statement that there is no such indemnity agreement. This information is to include contracts of other Procuring Activities and other departments or agencies of the Government involved, if any.

(b) Extent and dates of alleged infringement.

(c) Statement as to whether the Government by a duly authorized agent or official has given its authorization or consent to the manufacture or use of the article, material, design, or process upon which Such Claim is or will be based.

(d) Statement of effective date of marking or of notice under the Patent Marking Statute, if pertinent (see § 598.402-2).

(e) Copies of patents alleged to be infringed or, in case Such Claim arises under the Air Corps Act (see § 598.402-4), claimant's disclosure of his design.

(f) Result of title search, including examination of Government Register of Patent Rights (Executive Order 9424, Feb. 18, 1944; par. 4, AR 25-10).

(g) A full and complete disclosure of the alleged infringing device, material, design, or process (including a detailed description thereof, together with drawings, photographs, and specimens in proper cases) sufficient to determine whether infringement is present.

(h) Report of date and extent of prior art searches in each of the following categories:

(1) Prior art patents and publications.

(2) Pending applications filed by the service conducting the investigation.

(3) Prior public uses.

(i) Copies of prior art patents and publications, and full and complete description (and where practicable, a drawing, sketch, photograph, or specimen) of prior uses relied upon by the Delegate.

(j) Statement of the extent to which royalties, if any, have been adjusted by the Department under the Royalty Adjustment Act (see § 598.402-6).

(k) Statement as to whether or not the manufacture or use of the invention occurred while the owner of the patent was in the employment or service of the Government.

(l) Statement as to whether or not the patent was based upon an invention made during the time the inventor was in the employment or service of the Government.

(m) Names and addresses of prospective witnesses (fact and expert) and, where pertinent to validity or infringement, signed statements of witnesses. Where a witness refuses to sign a statement, a statement of the interviewing officer setting forth the facts which the witness may be expected to state if called to testify.

(n) Conclusions regarding infringement (with respect to all departmental procurement involved) and reasons therefor.

(o) Conclusions regarding validity and reasons therefor. No conclusions regarding validity need be stated, if the Delegate's conclusions given under (n) above are that in his opinion there is clearly no infringement present.

(p) Conclusions regarding Government liability, the estimated money value of the claim, and an estimate of future procurement involving possible increase of the claim.

(q) Summary of unsuccessful negotiations for settlement, if any.

(r) Recommendations.

§ 598.405-7 Action and authority of the Chief, Patents Division, OJAG. (a) The Chief, Patents Division, OJAG, shall coordinate the processing under this subpart of Such Claims and may request such status reports from the Delegates as are necessary for this purpose.

(b) Upon receipt from a Delegate of a final report under § 598.405-6, the Chief, Patents Division, OJAG, shall promptly review the same. In each case where a communication has been received in which Such a Claim is asserted, the Chief, Patents Division, OJAG, shall write a letter to the claimant, or his representative, stating the final conclusions of the Department with respect to Such Claim, and shall send copies thereof to the Delegate and the Head of each interested Procuring Activity.

(c) If, upon reviewing the final report, the Chief, Patents Division, OJAG, deems it advisable, he shall make a search of one or more of the following possible sources of additional prior art and, if the results of such search so indicate, he shall make a supplemental report, stating conclusions supplemental to the conclusions stated in the Delegate's final report, and send a copy of such supplemental report to the Delegate:

(1) Patent applications which are the subject of secrecy orders under the Secrecy Order Act (see § 598.402-3) in which the inventions disclosed therein have been tendered to the Government for its use.

(2) Patent applications filed by procuring services other than the investigating service.

(3) To the extent available, patent applications filed by other departments or agencies of the Government.

(d) If, upon reviewing the Delegate's final report, the Chief, Patents Division, OJAG, disagrees with the conclusions regarding infringement or validity, he shall make a supplemental report stat-

ing his supplemental conclusions and send a copy of such supplemental report to the Delegate.

(e) Upon completion of the final report, the Chief, Patents Division, OJAG, shall advise the Attorney General thereof.

§ 598.405-8 Available procedure for the settlement of Such Claims and procurement of invention and patent rights incident thereto. (a) The Delegate to whom the claim has been cleared may, subject to the availability of appropriations and allotments of funds in his service and subject to such rules and regulations governing the exercise of delegated powers as are or may from time to time be prescribed, settle Such Claim—

(1) By causing the United States to execute a contract of release, release and license, or release and assignment with the legal and equitable owner(s) providing for a payment or payments aggregating more than one dollar (\$1.00) to be made by the Government under the provisions of §§ 598.405-9-598.405-14 (see § 598.406-9 and form suggested therein).

(2) By receiving from the legal and equitable owner(s), or by causing the United States to execute a contract of release, release and license, or release and assignment which does not provide for payments aggregating more than one dollar (\$1.00) to be made to the Government (see § 598.406-8 and form suggested therein).

(b) No contract shall be made which includes a release of Such a Claim, or a license, which will inure to the benefit of a contractor who has agreed to indemnify the Government (see § 408.105 of this title and § 598.105) by releasing or discharging such contractor in whole or in part from his obligation of indemnity, unless such contractor is made a party to the contract and appropriate arrangements are made to the end that the contractor shall pay all money consideration flowing to the claimant or potential claimant which is attributable to that part of the release or license which benefits the contractor.

§ 598.405-9 Settlement with foreign claimants. No contract of settlement of patent infringement liability, or other liability for use of inventions, shall be made with a national of lend-lease beneficiary governments, or governments which are within the scope of the Mutual Defense Assistance Program, without first obtaining the written approval of the Chief, Patents Division, OJAG.

§ 598.405-10 Fiscal procedures. (a) An agreement to pay a fixed amount for the purchase of a paid up license and release or an assignment and release, or a release either by way of lump sum payment or an amount determinable at the time of execution of the contract, is subject to the provision that allotment of funds made for supplies will not be exceeded. Officers charged with making contracts will submit, prior to the incurrence of obligations, all proposed contracts to the fiscal officer for verification as to the sufficiency of funds for that purpose. The following statement will be included on the face of the contract:

The supplies and services to be obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following allotments, the available balances of which are sufficient to cover the cost of the same.

(b) An agreement to pay running royalties on future procurement proportioned to use is not subject to the provision mentioned in paragraph (a) of this section, nor need the period of payment be limited to the period for which existing appropriations are available. The Comptroller General has ruled (MS. Comp. Gen. A-76676, dated May 5, 1937) that such an agreement takes effect only in connection with, and to the extent of, future procurement under the license, and if such procurement is within appropriations and allotments then existing, they will cover the royalty agreed to be paid in respect thereto.

(c) The annual military appropriations acts for a number of years have contained the following provision, or substantially its equivalent:

The appropriations contained in this Act for the Air Force, Navy, and for the Army, which are available for the procurement or manufacture of supplies, materials, and equipment of special or technical design may be used for the development and procurement of gages, dies, jigs, and other production data, including specifications and detailed drawings, and for the purchase of copyrights and Letters Patent, applications therefor, and licenses thereunder pertaining to such supplies, equipment, and materials for which the appropriations are made.

These funds are available for the payment for releases, licenses, and assignments entered into in accordance with the provisions of these paragraphs: *Provided, however,* That no payment shall be made for the release of Such a Claim or any portion of Such a Claim the liability for which is barred by the statute of limitations or by other statute.

(d) In cases where it is determined to be in the interest of the Government to settle Such a Claim where no funds therefor are available or appropriated, the settlement contract shall be made with the payment being conditioned upon availability of appropriations, and request for appropriations for the purpose shall be made through the appropriate fiscal channels.

§ 598.405-11 Disclosure of information to claimants and their representatives. In order that settlements advantageous to the Government may be secured, any Delegate holding the powers, duties, and authorities of § 598.404-2, and any authorized representative of such Delegate, may, in the performance of his official duties and when he has reason to believe that such action would be to the advantage of the United States, disclose to the claimant, potential claimant, or authorized representative of either, any facts or matter of evidence which appear to bear upon his claim or its value, except as considerations of military security may indicate such disclosure would be inadvisable.

§ 598.405-12 Contracts requiring approval. Approval by the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, Department of the Army, is required of all contracts made under

the provisions of this subpart whether or not executed by the Government, under the following conditions:

(a) Where the contract provides for total payments by the Government aggregating \$25,000 or more.

(b) Where any of the following listed contract clauses are omitted from the class of contract specified for their use, or deviate from the form prescribed or authorized therein:

"Non-Estoppel" Clause (see § 598.406-5).

"Protection Against Unjust Payments" Clause (see § 598.406-6 (f)).

"Reserved Rights" Clause (see § 598.406-6 (g)).

(c) The scope of the license with respect to domestic practice is limited to:

(1) A term less than the life of any patent involved.

(2) Any particular governmental purpose.

(3) Less than all governmental agencies on the same terms.

(4) Disposition rights otherwise than according to law.

(d) Where the rights obtained are a release of past infringement only.

(e) In contracts for payment of running royalties, where no provision for termination by the Government is included, or where the period in which such termination may be made is longer than one year.

(f) If the contract conveys to the Government license rights under an issued patent and does not contain a release of past infringement of substantially the same scope as the contract clause prescribed in § 598.406-4.

§ 598.405-13 Submission of contracts for approval. (a) When a contract made under the provisions of this subpart requires the approval of the Chief, Current Procurement Branch, Assistant Chief of Staff, G-4, it shall be submitted to that office, with the number of copies desired approved and returned. There shall also be submitted with the contract a memorandum of facts signed by the Delegate containing the following:

(1) Identification and brief description of the subject matter of the patent, patent application, or invention involved in the claim being settled.

(2) Date of clearance from the Chief, Patents Division, OJAG, to investigate and to negotiate settlement of the claim, if deemed advisable.

(3) A brief statement of the Delegate's conclusions regarding validity and infringement and the reasons therefor.

(4) A statement of the extent of Government use of the invention(s), including the estimated money value of the claim, if any, and an estimate of future procurement, if any, involving possible increase of the amount of the claim.

(5) Specific reference to the sections of this Procedure which require the approval of the contract.

(6) Reasons for omission of, or deviation in, any prescribed contract clause, if such be the fact, together with statement of efforts made to obtain inclusion of such contract clause or acceptance thereof in its prescribed form. If there is a deviation in a prescribed contract clause, the deviation shall be pointed

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out preferably by a composite draft of the clause, showing new material added, by underscoring, and matter deleted, by lining out such deleted matter.

(7) Recommendation that the contract be approved and the reasons therefor.

(b) Concurrently with the above action, there shall be forwarded to the Chief, Patents Division, OJAG, a copy of the contract and said memorandum of facts.

§ 598.405-14 Contract numbering and distribution. (a) The Department will obtain the original and at least one executed duplicate original of each license, assignment, and release made under the provisions of these paragraphs.

(b) Licenses, assignments, and releases which are executed by the Government shall be numbered, if the actual or estimated amount involved is \$5,000 or more, or it is contemplated that more than one payment (or receipt) will be involved, regardless of the amount involved.

(c) The original of every license, assignment, and release, except those which do not involve the payment of money to the contractor, shall be forwarded by the Delegate to the Chief, Audit Division, General Accounting Office, Room 506, Old Office Building, Twelfth and Pennsylvania Avenue NW, Washington 25, D. C.

(d) The original or the executed duplicate original of every license, assignment, and release, together with a second copy (photostatic preferred), shall be transmitted without delay by the Delegate to the Chief, Patents Division, OJAG, for recording in the United States Patent Office under Executive Order 9424, February 18, 1944 (9 F. R. 1959), and for permanent filing thereafter. In transmitting each such instrument for recording, the Delegate will indicate in which of the following three Government registers maintained by the Patent Office, the instrument should be recorded:

(1) The register open to examination by the general public.

(2) The register available for examination and inspection only by duly authorized representatives of the Government.

(3) The secret register, access to which may be had only upon written authority from the head of the department or agency which submitted the instrument and requested secrecy (9 F. R. 4159).

(e) Each instrument shall be forwarded for recording with a memorandum or letter setting forth the following information:

(1) The name of the claimant and the name of the releasor, licensor, or assignor.

(2) The patentee or inventor's name.

(3) The number of the patent or serial number of the patent application involved.

(4) Date of issue of the patent or filing date of the application.

(5) Date of clearance from the Chief, Patents Division, OJAG, to investigate and settle the claim involved (see § 598.405-5).

(6) A statement that the instrument effects settlement of the claim for which the above clearance was granted.

(f) A copy of each license which provides for the payment of running royalties shall be transmitted by the Delegate to each of the Heads of the Procuring Activities for the attention of the chief legal or patent officer thereof. Receipt of such copy shall place the recipient Head of a Procuring Activity on notice that future procurement of the licensed subject matter requires the payment of royalties to the licensor (see § 598.406-6 (c)). Heads of the Procuring Activities shall notify, or cause to be notified, procurement and price analysis offices affected.

§ 598.406 Contract clauses and forms. The following contract clauses and forms are applicable to contracts for the settlement of infringement claims.

§ 598.406-1 Mandatory contract clauses. The following clauses shall be used in all contracts except as otherwise indicated in the instructions preceding the clause.

(a) The "Officials Not to Benefit" clause (see § 406.103-19 of this title) in every license, assignment, and release which is executed by the Government.

(b) The "Covenant against Contingent Fees" clause (see § 406.103-20 of this title) in every license, assignment, and release which is executed by the Government.

(c) The "Assignment of Claims" clause (see § 406.103-8 of this title) if the contract provides for payments by the Government aggregating \$1,000 or more.

(d) The "Nondiscrimination in Employment" clause (see § 406.103-18 of this title) if the performance of the contract involves the employment of persons by the contractor.

(e) The "Disputes" clause (see § 406.103-12 of this title) if the contract calls for payments by the Government aggregating \$20,000. This clause is recommended for inclusion in contracts of smaller amount.

§ 598.406-2 The license grant clauses. The contract clauses set forth below are suggested forms for expressing the license grant:

(a) The following clause is suggested for all contracts except those for the payment of running royalties:

LICENSE

(a) Contractor agrees to and does hereby grant and convey to the Government, an irrevocable, nonexclusive, nontransferable and paid up license under the following patent(s) [and application(s) for patent] to practice and cause to be practiced for the Government any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U. S. Patent No. _____ Date _____
Application Serial No. _____ Filing date _____

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to grant licenses thereunder].

(b) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

(b) In contracts requiring the payment of running royalties, the license will ordinarily be limited by licensor to the Department or agency agreeing to pay royalties. The following contract clause is designed for this purpose:

LICENSE

(a) Contractor agrees to and does hereby grant and convey to the Government, as represented by the Secretary of the Army, an irrevocable, nonexclusive, nontransferable license under the following patent(s) [and application(s) for patent] to practice by the Department of the Army and cause to be practiced for the Department of the Army any and all of the inventions thereof in the manufacture, use and disposition of any article or material, and in the use of any method, in accordance with law:

U. S. Patent No. _____ Date _____
Application Serial No. _____ Filing date _____

[together with corresponding foreign patents and applications for patent, so far as Contractor has the right to grant licenses thereunder].

(b) Nothing contained herein shall limit any rights which the Government may have obtained by virtue of prior contracts or by operation of law or otherwise.

§ 598.406-3 The license term clauses. The contract clauses set forth below are suggested forms for expressing the license term:

(a) One or the other of the following alternative clauses is suggested for all contracts except those for the payment of running royalties. Alternate A is for the full term of the patent and Alternate B contains provisions necessary for the protection of the Government where there is a right to terminate the license short of the full term of the patent.

TERMS

[Alternate A]

The license hereby granted shall remain in full force and effect for the full term of the patent(s) referred to above [and any and all patents hereafter issued on applications for patent referred to above].

[Alternate B]

The license hereby granted shall terminate on the _____ day of _____ 19____; provided, however, that said termination shall be without prejudice to the completion of any contract entered into by the Government prior to said date of termination or to the use or disposition thereafter of any articles or materials manufactured by or for the Government under this license.

(b) The following clause is for use in contracts for the payment of running royalties which must necessarily include the right to terminate on the part of the Government:

TERM

The License hereby granted shall remain in full force and effect for the full term(s) of the patent(s) referred to above [and any and all patents hereafter issued on applications for patent referred to above] unless sooner terminated as elsewhere herein provided.

§ 598.106-4 Release of past infringement clause. The following clause shall be included in all contracts granting rights to the Government under a patent already issued, made under the provisions of this subpart:

RELEASE OF PAST INFRINGEMENT

Contractor agrees to and does hereby release each and every claim and demand which

contractor now has or may hereafter have against the Government, its officers, agents, servants and employees, for infringement by or for the Government of [(1)] any of the patents and applications for patent specifically identified in this contract, [(2) and any other patent or application for patent now owned or hereafter acquired by contractor, insofar as and to the extent only as such other patent or patent application covers the manufacture, use or disposition of (description of subject matter)], by reason of the manufacture, use, sale, or other disposition of any article or material, or the use of any process covered by said patents or applications for patent, occurring prior to the date of this contract, and by reason of the use, sale, or other disposition thereafter of any article or material manufactured or contracted for prior to the date of this contract.

NOTE: Bracketed portions of the foregoing clause may be omitted when not appropriate or not encompassed by the release as negotiated.

§ 598.406-5 Non-estoppel clause. The following clause shall be included in all contracts made under the provisions of this subpart, except that it may be omitted when the consideration payable by the Government for the contract is not more than \$1.00 and the contract conveys to the Government (a) a release of not substantially less scope than that contained in § 598.406-4, and (b) a license for the full term of the licensed patents and patents issued on the patent applications or an assignment of not substantially less scope (except for foreign rights) than that contained in § 598.406-7.

NON-ESTOPPEL

Contractor agrees that the Government shall not be estopped at any time to contest the enforceability, validity or scope of, or the title to, any patent or patent application herein licensed.¹ [but this provision shall not be deemed to modify or avoid the obligation of the Government to pay royalties as elsewhere herein provided].²

§ 598.406-6 Contracts providing for the payment of a running royalty. The following instructions and provisions are special to contracts providing for the payment of a running royalty:

(a) Since the license requires the payment of royalties based upon procurement, and is not to be available to other agencies of the Government except upon the conditions specified in paragraph (e) of this section, the license grant is appropriately limited to the practice of the invention by or for the Department. For the appropriate "License Grant" Clause, see § 598.406-2 (b).

(b) The license term shall be made terminable by the Government. It may be terminable on conditions such as specified in the "Reserved Rights" Clause (see paragraph (g) below), or on giving of a specified period of notice, or at fixed times. In any event, it shall contain the right to the Government to terminate at the expiration of six months. For the appropriate "License Term" Clause, see § 598.406-3 (b).

¹The word "licensed" is appropriately changed to "assigned" in assignment contracts.

²The bracketed part is to be omitted except in contracts for payment of running royalties.

(c) Computation of royalties. The contract clause providing for the computation of royalties may be of varying scope. The following alternative clauses are suggested (Alternate A is based upon a percentage of the cost of the articles or materials; Alternate B is based upon a fixed amount per item):

COMPUTATION OF ROYALTIES

[ALTERNATE A]

Royalties shall accrue under this contract in favor of Contractor, subject to payment thereof at the times and subject to the limitation hereinafter stated on all articles or materials embodying or manufactured by the use of any or all of the inventions licensed herein, upon acceptance thereof by the Department of the Army (whether made by or for the Department of the Army), at the rate of _____ percent of the Cost (as hereinafter defined) of such articles or materials to the Government. "Cost," as used in this paragraph means (1) in respect of articles or materials purchased by or for the Department of the Army, the purchase price of such articles or materials, except that in cost-plus-fixed-fee contracts it means the estimated cost as defined in such contract, and (2) in respect of articles or materials made by the Department of the Army, the actual cost of direct labor and materials without allowance for overhead or supervision.

[ALTERNATE B]

Royalties shall accrue under this contract in favor of Licensor, subject to payment thereof at the times and subject to the limitation hereinafter stated, on all articles and materials embodying or made by the use of any or all of the inventions licensed herein, upon acceptance thereof by the Department of the Army (whether made by or for the Department of the Army), at the rate of _____ (¢) cents per [name of item].

(d) Reporting and payment of royalties. (1) The contract must contain a provision designating the chief of the technical service of the Delegate as the officer designated to make reports to the Contractor of the extent of use of the licensed subject matter by the entire Department, and such chief shall be charged with the responsibility of obtaining from all Procuring Activities the information necessary to make the required reports and the corresponding vouchers to make the required payments. The following clause is suggested for this purpose:

REPORTING AND PAYMENT OF ROYALTIES

(a) The [chief of technical service] shall, on or before the 60th day next following the end of each half yearly period ending June 30 and December 31 during which royalties have accrued under this license, deliver to Contractor a report in writing stating the number of articles and the amounts of materials accepted by the Department of the Army during said half yearly period on which royalties have accrued under this contract, and the Cost thereof.

(b) Royalties which have accrued under this contract during each half yearly period ending June 30 and December 31 shall be paid to Contractor, provided appropriations therefor are available, within 60 days next following the end of each such period; provided, however, that the Government shall not be obligated to pay, in respect of any such half yearly period, an amount greater than _____ (\$_____) Dollars.

(2) In the event military security prohibits the disclosure of the quantity of production by reports or payments to the Licenser the Delegate may negotiate

an appropriate substitute for the suggested "Royalties" Clause, for example, agreed lump sum yearly or half yearly payments with final settlement in accordance with actual production to be made within six months after termination of hostilities.

(3) Note § 598.405-14 (f) for instructions concerning furnishing copy of license to each Procuring Activity.

(e) License to other Government agencies. No department other than the Department of the Army shall be committed to such obligation unless the contract has been signed in behalf of each other department or agency of the Government similarly obligated. The following clause may be included in each contract of this type to accomplish the foregoing purpose:

LICENSE TO OTHER GOVERNMENT AGENCIES

(a) Contractor hereby agrees to grant a separate license under the patents, applications for patents, and improvements referred to in Article 1 hereof, on the same terms and conditions as appear in this license, to any department or agency of the Government other than the Department of the Army at any time on receipt of written request for such a license from such department or agency, provided, however, that as to royalties which accrue under such separate licenses, reports and payments will be made by such department or agency directly to Contractor and not by the [Head of Procuring Activity]. Contractor shall notify the [Head of Procuring Activity] promptly upon receipt of any request for license hereunder.

(b) When two or more departments or agencies shall have subscribed to this license, such agencies shall jointly make the report of royalties called for by subparagraph (a) of Article _____. The royalties payable by such departments or agencies shall be combined for the purpose of computing the Government's total half yearly obligation as set forth in subparagraph (b) of Article _____. When such combined royalties exceed the said total half yearly obligation, each Department or agency shall pay the pro rata share of the said total half yearly obligation as determined by the proportion its accrued royalties bear to the combined total of accrued royalties.

(f) Protection against unjust payments. The following clause shall be included in each contract providing for the payment of running royalties:

PROTECTION AGAINST UNJUST PAYMENTS

(a) If any license has been or shall hereafter be granted under substantially the same patents and authorizing substantially the same acts which are authorized under this contract within the United States, on royalty terms which are in any respect more favorable to the licensee than those contained herein, the Government shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this license after the date such more favorable terms become effective, and Contractor shall promptly notify the Secretary of the Army in writing of the granting of such more favorable terms.

(b) The Government shall have the right, notwithstanding any other provision of this contract, to terminate the within license by giving notice in writing to Contractor specifying a date when such termination is to be effective; termination of said license in the manner aforesaid may, as specified in such notice, take effect either in whole or insofar as said license applies to any specified service or command of the Department of the Army or to any specified article, material or method, or to the extent that rights are

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granted under any specified patent or the specified claims of any patent; and if any part of the said license is thus terminated the rights of the Government to enjoy or to terminate other parts thereof shall be in no wise prejudiced thereby.

(c) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this contract insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope or validity of such claims; provided, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this license shall be interpreted in conformity with the final decision rendered on such appeal.

(g) *Reserved rights.* The following clause shall be included in each contract providing for the payment of running royalties:

RESERVED RIGHTS

Nothing herein contained shall limit the right of the head of any other department (as hereinafter defined) to give notice under the Royalty Adjustment Act (Public Law 768—77th Cong., 35 U. S. C. 89–96) if at any time it is believed that royalties payable by others under the patents herein licensed, and which are charged or chargeable to the Government in connection with the procurement of supplies, equipment, or materials by any other department, are unreasonable or excessive, nor shall the head of any other department be deemed to have approved the rates or amounts of royalties specified herein. "Any other department" as used in this paragraph means all departments and agencies of the Government other than the Department of the Army.

(h) *Non-estoppel variation.* See § 598.406-5 for variation in form of this clause for use in contracts providing for the payment of running royalties.

§ 598.406-7 *Assignments.* The following contract provision and instructions are special to contracts of assignment of patent rights to the Government:

(a) A suggested title-transferring or assignment clause is set forth below. The bracketed portions of the clause may be omitted when such portions are not appropriate.

ASSIGNMENT

Contractor agrees to and does hereby sell, assign, and transfer to the Government and its assigns, as represented by the Secretary of the Army, the entire right, title and interest in and to the following patent(s) [and application(s) for patent], in and to the invention(s) thereof, and in and to all claims and demands whatsoever for infringement thereof heretofore occurred, the same to be held and enjoyed by the Government through its duly appointed representatives to the full end of the term of said patent(s) [and to the full end of the term(s) of all patents which may be granted upon said application(s) for patent or upon any division, renewal or continuation thereof] as fully and entirely as the same would have been held by Contractor had this assignment not been made:

<i>U. S. Patent No.</i>	<i>Date</i>	<i>Name of inventor</i>
-----	-----	-----
<i>U. S. Application Serial No.</i>	<i>Filing date</i>	<i>Name of inventor</i>
-----	-----	-----

[together with corresponding foreign patents and applications for patent, insofar as Contractor has the right to assign the same.]

(b) To facilitate proof of the contract the acknowledgment of each Contractor should preferably be executed by a notary public or other officer to administer oaths under section 1750 of the Revised Statutes (22 U. S. C. 131) (See Rule 331 of the Rules of Practice in the United States Patent Office, March 1, 1949).

§ 598.406-8 *Unilateral contract form; gratuitous grants.* (a) Numerous patent owners, for the purpose of assisting national defense, have, voluntarily and also upon the request of the Government, granted and are continuing to grant releases, royalty-free licenses and assignments to the Government to practice the inventions secured by their patents and applications for patent. Under these conditions or when the payments to be made by the Government under the contract do not aggregate more than \$1.00, it is unnecessary for the Government to execute the contract, but in the event it is executed by the Government the appropriate mandatory articles must be included. (See § 598.406-1.)

(b) The following unilateral contract form for such gratuitous grants is suggested:

DEPARTMENT OF THE ARMY

PATENT RELEASE AND LICENSE CONTRACT

This contract, made this _____ day of _____ 195_____, by _____ (hereinafter called Contractor),¹ a corporation organized and existing under the laws of the State of _____¹ a partnership consisting of _____¹ an individual trading as _____ of the City of _____ in the State of _____ in favor of the United States of America (hereinafter called the Government), as Promissee, witnesseth that

Whereas, to aid the national defense and promote the common welfare, numerous patent owners have, upon request of the Government, granted and are continuing to grant releases and royalty-free licenses to the Government to practice the inventions secured by their patents and applications for patents (hereinafter called "such inventions").

Whereas, the Government has utilized many such inventions for the purposes aforesaid and is desirous of obtaining further releases and royalty-free licenses including this release and license, and

Whereas, this contract is authorized by section 3 of the act of October 31, 1942 (Pub. Law 768, 77th Cong., 35 U. S. C. 89–96).

Now, therefore, in consideration of the premises and of the grant by other patent owners of like releases and licenses to the Government, Contractor has agreed as follows:

ARTICLE 1. [License] [Assignment].
(a) Use the clause set forth in § 598.406-2 (a) for a license.
(b) Use the clause set forth in § 598.406-7 (a) for an assignment.

ARTICLE 2. Term. Use the clause set forth in § 598.406-3 (a) for a license. A separate "Term" clause is not required when using the "Assignment" clause of § 598.406-7 (a).

ARTICLE 3. Release of past infringement. Use the clause set forth in § 598.406-4.

ARTICLE 4. Nonestopped. Use the clause set forth in § 598.406-5.

Successors and assigns. This contract shall be binding upon Contractor, its successors² and assigns.

In witness whereof, Contractor has executed this contract as of the day and year first above written.

(Name of Contractor)

By _____
Its _____

(Business Address)
[CORPORATE SEAL]

Two witnesses:

(Address)

(Address)

NOTE: Bracketed material may be deleted as appropriate.

¹ Delete all lines which do not apply.

² When Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

§ 598.406-9 *Bilateral contract form.* The following contract form is suggested for use for licenses, releases, or assignments when a consideration of more than \$1.00 is to be paid by the Government:

Contract No. _____
Negotiated

DEPARTMENT OF THE ARMY

PATENT RELEASE AND LICENSE CONTRACT

This contract, entered into this _____ day of _____, 195_____, by the United States of America (hereinafter called the Government), and _____ (hereinafter called Contractor),¹ a corporation organized and existing under the laws of the State of _____¹ a partnership consisting of _____¹ an individual trading as _____ of the City of _____ in the State of _____ witnesseth that

Whereas, Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same,

Whereas, this contract is authorized by section 3 of the act of October 31, 1942 (Pub. Law 768, 77th Cong., 35 U. S. C. 89–96).

Now, therefore, in consideration of the grant release and agreements hereinafter recited the parties have agreed as follows:

ARTICLE 1. [License Grant] [Release] [Assignment]. (Use the clause set forth in § 598.406-2 (a) for paid-up license.)

(Use the clause set forth in § 598.406-2 (b) for a license on a running royalty basis.)

(Use the clause set forth in § 598.406-4 for a Release only.)

(Use the clause set forth in § 598.406-7 for an assignment.)

ARTICLE 2. Term. (Use the appropriate alternative clause of § 598.406-3 (a) for a paid-up license.)

(Use the clause of § 598.406-3 (b) for a license on a running royalty basis.)

(A "Term" provision is never required for a Release. In a Contract of Assignment, the "Term" is set forth in the "Assignment" clause required by § 598.406-7 (a).)

ARTICLE 3. Release of past infringement. Use the clause set forth in § 598.406-4 where this is in addition to a license or an assignment.

ARTICLE 4. Non-EstoppeL Use the clause set forth in § 598.406-5.

ARTICLE 5. Payment.

(1) Use the following clause for a paid-up license, release or assignment:

ARTICLE 5. Payment. Contractor shall be paid the sum of _____ (\$_____) Dollars in full compensation for the rights herein granted and agreed to be granted.

(2) For a license on a running royalty basis, use the appropriate alternative clause

from § 598.406-6 (c), and also use the clauses as specified in §§ 598.406-4 (d) to 598.406-6 (g).

ARTICLE 6. Officials not to benefit. (See § 406.103-19 of this title.)

ARTICLE 7. Covenants against contingent fees. (See § 406.103-20 of this title.)

ARTICLE 8. Assignment of claims. (See § 406.103-8 of this title.)

ARTICLE 9. Non-discrimination clause. (See § 406.103-18 of this title.)

ARTICLE 10. Disputes clause. (See § 406.103-12 of this title.)

ARTICLE 11. Successors and assigns. This agreement shall be binding upon Contractor, its successors² and assigns, but nothing contained in this Article shall authorize an assignment of any claim upon the Government otherwise than as permitted by law.

In witness whereof, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA,

By _____
(Signature (and title) of
Delegate)

By _____
(Business Address)
[CORPORATE SEAL]

Two witnesses:

(Address)

(Address)

¹ The foregoing contract is hereby approved in behalf of the Secretary of the Army.

² By direction of the Under Secretary of the Army:

(Leave two lines blank)

Chief, Current Procurement Branch,
Office of the Assistant Chief of Staff, G-4.

Note: Bracketed material may be deleted as appropriate.

¹ Delete all lines which do not apply.
² When Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

SUBPART E—PROCUREMENT OF INVENTION AND PATENT RIGHTS

§ 598.500 Scope of subpart. This subpart sets forth the policy of the Department, applicable statutes, administrative requirements and procedures, and other pertinent information pertaining to the procurement of invention and patent rights, except as an incident to the settlement of claims for the use of inventions which is provided for in Subpart D of this part. This subpart also includes suggested contract forms for the procurement of the aforementioned rights, and mandatory and suggested articles to be used in said contracts. (See § 598.150 pertaining to this subject.) It implements Subchapter A, Chapter IV of this title generally rather than a specific section or part thereof.

§ 598.501 Definitions. As used in this subpart, the terms in §§ 598.501-1 through 598.501-4 have the meanings set forth therein:

§ 598.501-1 Chief, patents Division, OJAG. The term "Chief, Patents Division, OJAG" means the Chief, Patents

Division, Office of The Judge Advocate General, Department of the Army, Washington 25, D. C.

§ 598.501-2 Delegate. The term "Delegate" means any office, board, agency or officer to whom the powers, duties, and authorities set forth in § 598.404-2 have been delegated.

§ 598.501-3 Proffered License or Assignment. "Proffered License or Assignment" means a license or an assignment which is offered to the Department by the owner of an invention.

§ 598.501-4 Proposed License or Assignment. Proposed License or Assignment" means a license or assignment the acquisition of which is initiated or proposed to the owner by the Department.

§ 598.502 Applicable statutes.

§ 598.502-1 The Royalty Adjustment Act. This act (see § 598.402-6), among other things, authorizes the head of any department or agency of the Government to enter into an agreement with the owner of an invention (whether patented or unpatented) for compensation to be paid such owner based upon contemplated future manufacture, use, sale, or other disposition of such invention by or for the Government. Such agreements, however, are subject to the approval of the Chief, Current Procurement Branch, Office, Assistant Chief of Staff, G-4, in each case when that approval is required by § 598.505-8.

§ 598.502-2 Annual National Military Establishment Appropriation Act. The annual military appropriation act, for a number of years, has contained the provision quoted in § 598.405-10 (c) relating to the availability of funds appropriated thereby for the purchase of licenses (with or without a release from liability for any past infringement) and assignments (with or without a release) entered into in accordance with the provisions of this subpart: *Provided, however, That no part of any such payment shall be made for a release from liability for any past infringement for which recovery is barred by the statute of limitations or other statute.*

§ 598.503 General policy. In order to avoid infringement of privately owned rights in inventions and under U. S. patents and to avoid litigation and attendant nonproductive time, the policy of the Department is to obtain necessary rights under patents and applications for patents which are pertinent to contemplated future procurement activities, in cases where it is in the interest of the Government to do so and the desired rights can be obtained at not more than their fair value. In furtherance of this policy (a) each license or assignment of rights under patents or applications for patents proffered to the Department by the owner thereof, and (b) each license or assignment proposed by the Department, shall be processed for consideration on behalf of the Department in accordance with the instructions contained in such of §§ 598.505-2 through 598.505-5 hereof as are applicable to the particular type of license or assignment (proffered or proposed). If, following

such consideration, it is believed that any patent included in such license or assignment covers contemplated procurement and is valid and enforceable, and it is deemed advisable by the Delegate or the Contracting Officer to whom the matter has been cleared, efforts shall be made to consummate an appropriate license or assignment with said owner pursuant to the instructions and procedures set forth in §§ 598.505-6 through 598.505-10.

§ 598.504 Authority and Delegations. The statutory authority of the Secretary of the Army to delegate his power to enter into license and assignment agreements, as set forth in §§ 598.404-2 and 598.502-1, and to prescribe necessary rules and regulations in this connection, is stated in § 598.404-1. Section 598.301-10 lists the offices, boards, agencies, and officers (herein called "Delegates") to whom such power has been delegated. The prescribed rules and regulations appear in §§ 598.505 through 598.505-10.

§ 598.505 Prescribed regulations.

§ 598.505-1 Duties of the chiefs of technical services. (a) The chief of each technical service, or such other Delegate within his service as he may designate, is charged with the duty of taking appropriate action with respect to each Proffered or Proposed License or Assignment pertaining to the procurement responsibilities of his service promptly after knowledge thereof has been brought to his attention. Such action includes:

(1) Writing the invention owner or his representative, in the case of a Proffered License or Assignment, acknowledging receipt of the communication in which the license is proffered (a suggested form of acknowledgment appears in § 598.505-3); in the case of a Proposed License or Assignment, writing the invention owner, at the appropriate time, to ascertain the terms upon which the Proposed License or Assignment may be obtained.

(2) Requesting clearance from the Chief, Patents Division, OJAG, to consider each Proffered or Proposed License or Assignment and to procure such License or Assignment on behalf of the Department, pursuant to § 598.505-4.

(3) Considering each such Proffered License or Assignment upon clearance from the Chief, Patents Division, OJAG, and, if deemed appropriate by the Delegate, procuring such Proffered or Proposed License or Assignment pursuant to §§ 598.505-6 through 598.505-10.

(4) Preparing and transmitting to the Chief, Patents Division, OJAG, pursuant to § 598.505-5, a final report with respect to each such Proffered or Proposed License or Assignment which is not procured.

(5) Effecting the required distribution of each such Proffered or Proposed License or Assignment procured, pursuant to § 598.505-10.

(b) The actions specified in paragraph (a) of this section, and wherever referred to elsewhere in this subpart, may be performed by an authorized representative of the Delegate, including Contracting Officers.

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§ 598.505-2 Reporting of proffered and contemplated licenses and assignments. The chief of each technical service shall issue necessary instructions to all officers and employees of his service to provide for prompt submission to the chief legal or patent officer in the headquarters of his service of (a) all communications received in his service from patent owners proffering licenses and assignments, and (b) all contemplated licenses and assignments initiated in his service which it is proposed be procured from the owners of inventions by the Department. All communications proffering licenses and assignments received by other agencies of the Department (e. g. Office of The Adjutant General, boards and committees not under the jurisdiction of the procuring services, etc.) shall be sent to the Chief, Patents Division, who will forward the same, for processing under this subpart, to the chief legal or patent officer of the procuring service appearing to have the principal interest in the license or assignment. Such other agencies shall issue necessary instructions in this connection.

§ 598.505-3 Correspondence with invention owner or his representative. Upon receipt of a communication from an invention owner or his representative, proffering a license or an assignment, the Delegate shall acknowledge receipt thereof. The following form of letter is suggested for such purpose, subject to such modifications and additions as may be required by the nature of the license or assignment offered and the desire, if any, of the Delegate for additional information to aid in considering the offer, such as the names and addresses of any licensees, copies of their license agreements, etc.:

[Letterhead of Delegate]

[Date]

JOHN DOE
Title Guarantee Building,
Miami, Florida.

DEAR SIR:

Your letter to _____ dated _____ 19_____, offering [to grant a non-exclusive license to (the Department of the Army) under] ¹ [to assign to the Government the entire right, title, and interest in] ¹ U. S. Letters Patent No. _____, granted (date of patent), to (patentee's full name), of (city and state), for "(Title of Invention)", at suitable terms to be agreed upon, has been referred to this office for necessary action and direct reply.

I am directed by the Secretary of the Army to inform you that your offer will be carefully considered and that you will be notified of the Department of the Army's conclusions in this connection upon completion of such consideration.

Sincerely yours,

[Signature of Delegate]

¹ The applicable bracketed part should be used.

§ 598.505-4 Clearance to consider and procure licenses and assignments. (a) Promptly after (1) receipt of a communication proffering a license or an assignment, or (2) a determination has been reached to endeavor to obtain a license or an assignment from a patent owner, the Delegate shall request in writing from the Chief, Patents Division, OJAG, clearance to consider and procure such Prof-

fered or Proposed License or Assignment on behalf of the Department.

(b) Each request for clearance shall be submitted in eight copies and shall include the following:

(1) The name and address of the invention owner.

(2) The number and date of each patent and the serial number and filing date of each patent application involved, and the inventor's name.

(3) A copy of the communication from the patent owner (or his representative) making the offer, if any.

(4) Description of the subject matter of the patent (or application) in such detail to permit other Procuring Activities to determine therefrom whether they have any interest in the matter.

(5) A résumé of the nature and terms of the Proffered or Proposed License or Assignment, and a copy of such License or Assignment, if any.

(6) The names of any other Procuring Activities of the Department which might be interested in the Proffered or Proposed License or Assignment, and a statement as to the probable interest of the Departments of the Navy and the Air Force in the matter.

(7) Any other pertinent information to aid other possibly interested Department of Defense agencies in determining whether they have any interest in the matter.

(c) The Chief, Patents Division, OJAG, upon receipt of the request for clearance, shall determine from his files whether the Government has any license or other interest in the title to any patent or patent application involved, and shall then grant such clearance in writing as appears proper, including therein any pertinent information in his files.

(d) Upon the granting of such clearance to a Delegate, the Delegate shall, in accordance with § 598.505-1 (a) (3) and on behalf of the Department, proceed to consider the Proffered or Proposed License or Assignment and, if deemed advisable by him, following coordination with any other interested Department of Defense agencies, to procure the same pursuant to the provisions of §§ 598.505-6 through 598.505-10.

(e) The Chief, Patents Division, OJAG, shall send copies of said request for clearance and of the clearance to the chief patent officer (or the chief legal officer if there be no chief patent officer) of each of the Procuring Activities of the Department, excepting those which clearly would have no interest in the matter, but including any such services referred to by the Delegate in the clearance request. Each such officer to whom said copies are sent shall promptly inform the Delegate to whom clearance has been issued of the interest, if any, of his service in the matter and of any pertinent information in his file (negative reports should be made when justified by the facts). The Chief, Patents Division, OJAG, shall also send copies of said clearance request and clearance to the Deputy Chief of Naval Research for Patents, Office of the Chief of Naval Research, Department of the Navy, and to the Chief, Patents Branch, Office of the Judge Advocate General, Department of the Air Force, together with a request

that said Delegate be informed promptly of the interest, if any, of their Departments in the matter, and of any pertinent information in their files, in order to avoid unnecessary duplication of work on corresponding Proffered and Proposed Licenses and Assignments in the Department of Defense and to endeavor to procure licenses and assignments in keeping with the interests of all of said Departments involved.

(f) Any chief patent or legal officer notified of the granting of clearance to a Delegate who fails to make the above-mentioned report promptly to such Delegate, shall be requested in writing by the Delegate to render such report. The Delegate shall make similar requests of the Departments of the Navy and the Air Force in the absence of prompt reports from said Departments. No Proffered or Proposed License or Assignment shall be procured by a Delegate or a final report rendered (pursuant to § 598.505-5) with respect to such License or Assignment which is not procured, until reports are received by said Delegate from each chief patent or legal officer notified of the granting of the clearance, unless adequate explanation for the absence of any such report is presented.

§ 598.505-5 Final report by delegate where no license or assignment is procured. A final report (in duplicate) of the results of the consideration on behalf of the Department, including a statement of the final conclusions and the final action of the Delegate relative thereto on behalf of the Department, will be made by the Delegate to the Chief, Patents Division, OJAG, with respect to each such Proffered or Proposed License or Assignment procurement of which (a) is believed by the Delegate to be inadvisable or, (b) the Delegate is unable to accomplish upon terms deemed reasonable by him. Copies of such report shall be forwarded by the Delegate to the chiefs of all the interested procuring services of the Department and to the Departments of the Navy and the Air Force (i. e. to the officials referred to in § 598.505-4 (e)) concurrently with transmittal of the original to the Chief, Patents Division, OJAG.

§ 598.505-6 Available procedure for the procurement of licenses and assignments. The Delegate to whom clearance has been granted by the Chief, Patents Division, OJAG, may procure a desired license or assignment, with or without a release of past infringement, as set forth in § 598.405-8 (a), subject to the restrictions of § 598.405-8 (b).

§ 598.505-7 Fiscal procedures. The fiscal procedures, provisions and requirements set forth in § 598.405-10 are applicable to the procurement of a license (with or without a release) or an assignment (with or without a release).

§ 598.505-8 Contracts of license and assignment requiring approval. The requirements of § 598.405-12 with respect to approval by the Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, of all contracts made under the provisions of Subpart D of this part under said specified conditions, are also applicable to all contracts made un-

der the provisions of this subpart under such conditions.

§ 598.505-9 Submission of contracts for approval. The requirements of § 598.405-13 relative to the submission for approval of contracts made under the provisions of Subpart D of this part also apply to contracts made under the provisions of this subpart and required to be submitted for approval to the Chief, Current Procurement Branch, Office of the Assistant Chief of Staff, G-4, including the required memorandum of facts from the Delegate with paragraphs (a) (1)-(4) thereof changed to read:

(1) Identification and brief description of the subject matter of the patent or patent application involved in the license or assignment.

(2) Date of clearance from the Chief, Patents Division, to consider the license or assignment and to procure the same, if deemed advisable.

(3) Brief statement of the Delegate's conclusions regarding (i) potential infringement of the patent by contemplated future Department of Defense procurement and (ii) the validity of the patent, including the reasons therefor.

(4) Statement of the estimated extent of contemplated future Department of Defense procurement involving use of the invention, including the estimated money value of a potential claim for infringement of the patent based upon such procurement, broken down according to the Departments of the Army, the Navy and the Air Force.

§ 598.505-10 Contract numbering and distribution. The requirements of § 598.405-14, pertaining to contracts made under the provisions of Subpart D of this part, apply to contracts of license and assignment made under the provisions of this part, including the required memorandum or letter referred to in § 598.405-14 (e) with the following items changed to read as indicated below:

(1) The name of the licensor or assignor.

(5) Date of clearance from Chief, Patents Division, OJAG, to consider and procure the license or assignment.

(6) A statement that the instrument procured constitutes the license or assignment for which the above clearance was granted.

§ 598.506 Contract clauses and forms. The following contract clauses and forms are applicable to contracts of license and assignment:

§ 598.506-1 Mandatory contract clauses. The clauses listed in § 598.406-1 shall be used in all contracts, except as otherwise indicated in the instructions preceding the clause.

§ 598.506-2 The license grant clauses. The clauses set forth in § 598.406-2 are suggested forms for expressing the license grant.

§ 598.506-3 The license term clauses. The clauses set forth in § 598.406-3 are suggested forms for expressing the license term.

§ 598.506-4 Release of past infringement clause. The clause set forth in § 598.406-4 shall be included in all contracts granting rights to the Government under a patent already issued, made under the provisions of this subpart, unless its omission or modification is approved by the Chief, Current Pro-

curement Branch, Office, Assistant Chief of Staff, G-4, pursuant to §§ 598.505-8 and 598.505-9. Bracketed portions of the clause may be omitted when not appropriate or not encompassed by the release as negotiated.

§ 598.506-5 Non-estoppel clause. The clause set forth in § 598.406-5 shall be included in all contracts made under the provisions of this subpart, except that it may be omitted under the circumstances stated in said section.

§ 598.506-6 Contracts providing for the payment of a running royalty. Reference is made to § 598.406-6 for special instructions and contract provisions relative to contracts providing for the payment of a running royalty.

§ 598.506-7 Assignments. Attention is invited to § 598.406-7 for special instructions and contract provisions pertaining to contracts of assignment of patent rights to the Government.

§ 598.506-8 Unilateral contract form; gratuitous grant. The comments and requirements of § 598.406-8 (a) with respect to gratuitous grants of licenses and assignments are applicable to gratuitous contracts of license and assignment made under the provisions of this subpart, as is also the suggested unilateral contract form for such gratuitous grants set forth in § 598.406-8 (b).

§ 598.506-9 Bilateral contract form. The contract form set forth in § 598.406-9 (a) is suggested for licenses (with or without a release) and assignments (with or without a release) when a consideration of more than \$1.00 is to be paid by the Government.

PART 599—BONDS AND INSURANCE

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AUTHORITY: §§ 599.000 to 599.360 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure March 15, 1951.

§ 599.000 Scope of part. Supplementary to, but consistent with, Part 409 of this title, this part sets forth policies and procedures in connection with (a) bonds, (b) sureties on bonds, and (c) insurance.

SUBPART A—BONDS

§ 599.101 Definitions—(a) Annual bid bond. An annual bid bond is a single bond which secures all bids submitted by a contractor to a Procuring Activity, or to such Contracting Officers of a Procuring Activity as may be designated by that Activity, during a specific fiscal year in response to formal advertising. Such bond is furnished in lieu of separate bid bonds. It is used only in connection with contracts other than construction contracts.

(b) Annual performance bond. An annual performance bond is a single bond which secures the performance and fulfillment of all undertakings, covenants, terms, conditions, and agreements of all contracts of a contractor entered into with a designated agency, or to such Contracting Officers of a Procuring Activity as may be designated by that Activity, during a specific fiscal year. Such a bond is executed in lieu of executing separate performance bonds for each contract. It is used only in connection with contracts other than construction contracts.

(c) Fidelity bond (blanket). A fidelity bond is a bond under which the obligor agrees to indemnify an employer up to an amount stated in the bond for losses caused by dishonesty on the part of all employees except those expressly excluded by written endorsement on the bond.

(d) Forgery bond or policy (depositor's form). A forgery bond or policy is a bond or policy under which the obligor agrees to reimburse a purchaser and others named in the bond or policy (the insureds) to an amount stated in the bond or policy:

(1) For losses caused by the forging or altering of a check, draft, or similar instrument issued by or purported to have been issued by any of the insureds named in the bond or policy;

(2) For losses resulting from the fact that a check or draft has been obtained

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from the insureds through the device of impersonation.

(e) *License or permit bond.* This is a bond which secures to a municipality or other public authority the payment of fines or the amount of any losses sustained as a result of action taken, or omitted to be taken, in violation of the terms of a license or permit. The indemnity sometimes runs to third persons in addition to the municipality.

(f) *Consent of surety.* A consent of surety is an instrument by which the surety on a bond or bonds supporting a contract consents to a supplemental agreement which goes beyond the scope of the contract, or a change order in excess of \$25,000, and agrees that the bond or bonds previously given to support the basic contract shall apply to the contract as modified.

§ 599.103 Performance bonds.

§ 599.103-1 Contracts other than construction contracts. Authority is given to the Head of the Procuring Activity concerned, and to such other person or classes of persons as he shall designate, to determine whether a performance bond shall be required in connection with a contract other than a construction contract.

§ 599.103-2 Construction contracts. The penalty of the performance bond required in connection with a construction contract shall be at least in an amount equal to 50 percent of the contract price. Setting forth of a minimum percentage herein shall not be construed as a bar to fixing a penalty in a greater percentage, up to 100 percent of the contract price, in a case where a greater penalty is deemed advisable for the protection of the United States, and fixing such greater penalty will not eliminate small, otherwise potentially acceptable contractors.

§ 599.103-3 Additional performance bonds. (a) If a performance bond has been required in connection with a contract other than a construction contract, and there is executed a change order in excess of \$25,000 or a supplemental agreement providing for any increase in the contract price, an additional performance bond to cover the increase shall be furnished, unless it is waived in accordance with law. In lieu of an additional bond, a consent of surety in the form set forth in § 599.203 (a) may be furnished.

(b) When, in connection with a construction contract, there is executed a change order in excess of \$25,000 or a supplemental agreement providing for any increase in the contract price, an additional performance bond to cover the increase will be furnished. In lieu of an additional bond, a consent of surety in the form set forth in § 599.203 (a) may be furnished.

§ 599.104 Payment bonds.

§ 599.104-1 Contracts other than construction contracts. As a general rule, payment bonds shall not be required in connection with contracts other than construction contracts. Authority is granted to the Head of the Procuring Activity concerned, and to such other

persons or classes of persons as he may designate, to determine whether a payment bond will be required to support any such contract.

§ 599.104-3 Additional payment bonds. (a) If a payment bond has been required in connection with a contract other than a construction contract, and there is executed a change order in excess of \$25,000 or a supplemental agreement providing for any increase in the contract price, an additional payment bond to cover the increase shall be furnished, unless it is waived in accordance with law. In lieu of an additional bond, a consent of surety in the form set forth in § 599.203 (a) may be furnished.

(b) When, in connection with a construction contract, there is executed a change order in excess of \$25,000 or a supplemental agreement providing for any increase in the contract price, an additional payment bond to cover the increase shall be furnished. In lieu of an additional bond, a consent of surety in the form set forth in § 599.203 (a) may be used.

§ 599.105 Advance payment bonds. Section 7b of the Armed Services Procurement Act of 1947 states that the power given to the "agency head" by section 5a thereof to make determinations or decisions with respect to the granting of advance payments shall not be delegable. Therefore, authority to make determinations with respect to advance payment bonds will remain in the Secretary. The Head of the Procuring Activity shall make recommendation to the Secretary as to the type and extent of advance payment bonds when requests for advance payments are under consideration. (See Subpart E of Parts 402 and 592 of this title.)

§ 599.106 Patent infringement bonds. (a) A patent infringement bond will not be required with respect to any contract in connection with which a performance bond has been executed.

(b) Even if a performance bond has not been executed, the requirement of a patent infringement bond will be the exception rather than the rule. Where, however, a supply contract or construction contract contains a patent clause of the type set forth in Part 408 of this title, and the financial responsibility of the contractor is unknown or doubtful, a patent infringement bond may, in the discretion of the Head of the Procuring Activity concerned, or his delegate, be required.

(c) On such bonds as are required, the penal sum will be the lowest which, in the exercise of sound judgment, is deemed adequate for the protection of the interests of the United States.

§ 599.107 Other types of bonds and miscellaneous bond requirements—(a) Fidelity bonds. (1) Fidelity bonds will be required in connection with cost or cost-plus-fixed-fee supply contracts, construction contracts or contracts for the operation of Government-owned plants only in those cases where, in the opinion of the Head of the Procuring Activity concerned, or his delegate, such bonds are considered to be reasonably

necessary for the protection of the contractor or the Government.

(2) When a fidelity bond is required, a Primary Commercial Blanket form of bond providing for retroactive reinstatement for prior losses in the penal sum of \$10,000 will be considered sufficient. The Primary Commercial Blanket form of fidelity bond as standardized by the Surety Association of America or its equivalent is the approved form of fidelity bond. There should be attached thereto the following:

(i) A rider excluding any claim on the part of the surety company to be subrogated, on payment of loss or otherwise, to any claim against the United States.

(ii) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(iii) A rider providing for notice to the Procuring Activity concerned in the event of any change in or cancellation of the bond.

(iv) A rider providing for investigation of all Class A employees.

(v) A rider providing for investigation of all claims.

There are a variety of discounts which may be applied to blanket fidelity insurance under certain circumstances. Therefore, when blanket fidelity insurance is purchased, carriers should be cautioned to apply all appropriate discounts.

(b) Forgery bonds. (1) This type of bond will be required in connection with cost or cost-plus-fixed-fee supply contracts, construction contracts or contracts for the operation of Government-owned plants only in those cases where, in the opinion of the Head of the Procuring Activity concerned, or his delegate, such bonds are considered to be reasonably necessary for the protection of the contractor or the Government.

(2) If, in such a case, it is determined that a forgery bond or policy is desirable to obtain the investigating and claims facilities of a surety company and is considered reasonably necessary for the protection of the United States or the contractor, a forgery bond or policy with a retroactive reinstatement rider may be approved in the penal sum of \$10,000. This sum is considered sufficient. The depositor's form of forgery bond or policy as standardized by the Surety Association of America or its equivalent is the approved form of forgery bond. There should be attached thereto the following:

(i) A rider excluding any claim on the part of the surety company to be subrogated, on payment of loss or otherwise, to any claim against the United States.

(ii) A rider providing for pro rata refund of premium in event of cancellation by the Insured.

(iii) A rider providing for notice to the Procuring Activity concerned in the event of any change in or cancellation of the bond.

(iv) A rider providing for the investigation of all claims.

(c) Endorsement excluding subrogation to claims against the United States. In every case where a contract requires the United States to pay the premium either directly or by way of reimburse-

ment on a bond, the bond will contain an endorsement or other recital excluding by appropriate language any claim on the part of the surety to be subrogated, on payment of a loss or otherwise, to any claim against the United States.

(d) *Riders and endorsements particularly applicable to fidelity and forgery bonds*—(1) *Retroactive reinstatement rider*. This rider contains a provision which is available for blanket fidelity and forgery bonds whereby after a loss has been sustained, the penalty of the bond is restored to its original amount notwithstanding prior losses. There is contained in the bond itself a provision which automatically restores the penalty of the bond to the original amount with respect to future losses.

(2) *Waiver of restoration premium rider*. This rider contains a provision which is available for blanket fidelity and forgery bonds which has the effect of eliminating the premium charge for restoring the penalty of the bond after a loss has been sustained.

(3) *Endorsement excluding subrogation to claims against the United States*. This endorsement contains a provision which excludes any claim on the part of the surety company to be subrogated on payment of a loss or otherwise to any claim against the United States. It is required to be placed on any fidelity or forgery bond, the premium for which is either paid by the Government directly or is a reimbursable item under cost-plus-a-fixed-fee contract.

(4) *Cancellation or change notice rider*. This rider contains a provision by which a surety agrees to notify certain named interested parties in the event that the bond is cancelled or changed in any other manner.

§ 599.108 Execution and administration of bonds—(a) *Execution*. All bonds will be executed in duplicate.

(b) *Filing and examination of bonds and consent of surety*—(1) *Distribution*.

(i) The original of all surety bonds required by the various elements of the Department (except as hereinafter provided in subdivision (ii) of this subparagraph) will be forwarded to The Judge Advocate General, Washington 25, D. C. If such bond was required in support of a contract or modification thereof, the original signed number of the bond should be attached to the original signed number of the contract or modification thereof, as the case may be, and forwarded to The Judge Advocate General. In the event it is not practicable to forward the original number of the contract or modification, a duplicate signed number or an authenticated copy thereof should be attached to the original bond and forwarded to The Judge Advocate General. The Judge Advocate General will examine bonds as to legal sufficiency and as to form and execution. In the case of corporate sureties he will include examination to ascertain whether the corporate officials who purported to execute the bonds on behalf of the corporate sureties had authority to do so; and in the case of individual sureties he will include examination to ascertain whether the affidavits of justification and the certificates of sufficiency of the

sureties are in accordance with § 599.210 (b). The Judge Advocate General will then forward the bond, together with any contract or modification thereof which it supports, to the proper office for filing. The duplicate bond will be retained and filed in the office to which it pertains or which authorized its acceptance.

(ii) Consents of surety will be handled in the same manner as bonds, except that for more expeditious handling they may be forwarded in blank to The Judge Advocate General who will have them executed in Washington under the Expediter Plan and then approve them.

(iii) The following bonds will not be forwarded to The Judge Advocate General:

(a) Bid bonds (except annual bid bonds). The original and duplicate numbers will be retained in the office to which they pertain or which authorized their acceptance.

(b) Blanket fidelity and forgery bonds.

(c) *Authority of The Judge Advocate General as to substitute surety bonds*. The Judge Advocate General is authorized to act for the Secretary in accepting a new surety bond in substitution for a bond previously approved by the Department and covering part or all of the same obligation, and in authorizing the notification of the principal and surety on the bond originally furnished that it will not be considered as security for any default occurring subsequently to the date of approval of the new bond. The Judge Advocate General is authorized to delegate such function to whomsoever he may designate within his office.

(d) *Miscellaneous bond forms*—(1) *Bid bond*. Standard Form 24 (November 1950 Edition) will be used in accordance with accompanying instructions.

(2) *Annual bid bond*. Standard Form 34 (November 1950 Edition) will be used in accordance with accompanying instructions.

(3) *Performance bond*. Standard Form 25 (November 1950 Edition) will be used in accordance with accompanying instructions.

(4) *Annual performance bond*. Standard Form 35 (November 1950 Edition) will be used in accordance with accompanying instructions.

(5) *Payment bond*. Standard Form 25A (November 1950 Edition) will be used in accordance with accompanying instructions.

(6) *Patent infringement bond*. The appropriate patent infringement bond form is:

Know all men by these presents, That we _____ as Principal, and _____ as Surety, are held and firmly bound unto the United States of America, hereinafter called the Government, in the penal sum of _____ dollars, lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the principal entered into a certain contract, hereto attached, with the Government, dated _____, 19_____, for _____ and whereas the said principal has specifically obligated himself in said contract to hold and save the Government, its officers, agents, servants, and employees, harmless from liability of any nature

or kind, including cost and expenses, for or on account of any patented or unpatented invention, article, or appliance manufactured or used in the performance of that contract, including their use by the Government of the articles therein contracted for.

Now, therefore, if the principal shall well and truly perform and fulfill the above undertaking and agreement, and shall promptly make payment of any judgment and costs obtained against the United States under the provisions of the act of June 25, 1910 (36 Stat. 851) as amended by the act of July 1, 1918 (40 Stat. 705) or expenses incident thereto, then this obligation to be void; otherwise to remain in full force and effect.

In witness whereof, the above-bounden parties have executed this instrument under their several seals this _____ day of _____ 19_____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

SUBPART B—SURETIES ON BONDS

§ 599.201 General requirements of sureties—(a) *Corporate sureties*—(1) *Acceptability*. In order to be acceptable, the corporate surety must have obtained from the Secretary of the Treasury authority to do business under the act of August 13, 1894 (28 Stat. 279), as amended by the act of March 23, 1910 (36 Stat. 241); 6 U. S. C. 8. A list of the corporations approved by the Secretary of the Treasury is published semi-annually by the Treasury Department as Form No. 356 (Section of Surety Bonds). This list indicates the maximum penal sum in which any corporate surety may underwrite any one obligation. Any corporation whose name is on this list is acceptable within the limits of such approval. The Heads of the Procuring Activities are responsible for distributing copies of the list, and may obtain copies thereof through The Judge Advocate General to whom a requisition for the requirements of each Procuring Activity should be sent semi-annually on or before March 15 and September 15.

(2) *Qualifications of agents and corporate sureties*. Corporate sureties should forward to The Judge Advocate General, Washington 25, D. C. for filing: powers of attorney or certified copies of resolutions of their Boards of Directors or Trustees authorizing their officers or agents to execute bonds, and certificates evidencing the revocation of authority previously granted to execute bonds.

(3) *Corporate co-sureties*. More than one corporate surety may be accepted as surety upon any recognition, stipulation, bond, or undertaking in connection with either supply or construction contracts, provided that in no case will the liability of any such co-surety exceed the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. On bonds covering supply contracts where the amount of the bond is greater than the underwriting limitation of the corporate surety, the latter may reinsure with a corporation on the acceptable list of corporate sureties and having the required underwriting capacity. Reinsurance agreements are not acceptable in connection with construction contracts. It is not necessary that corporate co-sureties obligate themselves for the full amount of

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the bond. Each corporate surety may, by setting forth the limit of its liability in the bond as a definite and specified sum, limit such liability. In all cases the liability shall be limited to the maximum penal sum in which the corporate surety is qualified to underwrite any one obligation. As further indicated by the aforementioned forms, the sureties must, however, bind themselves "jointly and severally" for the purpose of allowing a joint action or actions against any or all of them. When the bond is to be executed by two or more corporate sureties, Standard Form 27 (November 1950 Edition) will be used in the case of a performance bond and Standard Form 27A (November 1950 Edition) will be used in the case of a payment bond, each in accordance with the accompanying instructions.

(b) *Individual sureties*—(1) *Acceptability*. Individual sureties are acceptable for all types of bonds other than fidelity and forgery bonds, provided that they meet the requirements specified in subparagraphs (3) and (5) of this paragraph.

(2) *Number*. If individual sureties are used there shall be at least two responsible individuals on each bond.

(3) *Citizenship*. (i) Except as prescribed in subdivision (ii) of this subparagraph individual sureties will be citizens of the United States.

(ii) Sureties on bonds executed in foreign countries, the Canal Zone, Puerto Rico, Hawaii, Alaska, Guam, or any possession of the United States, to secure the performance of contracts entered into in those places need not be citizens of the United States. However, unless they are citizens of the United States they must be domiciled in the country, territory or possession where the contract is to be performed.

(4) *Extent of liability*. The liability of each individual surety shall extend to the entire penal amount of the bond.

(5) *Justification*. Individual sureties will each justify in an amount not less than the penal amount of the bond.

(6) *Stockholders as sureties*. In connection with any bond of which a corporation is the principal obligor, a stockholder of that corporation is acceptable as co-surety on the bond: *Provided*, That his net worth exclusive of his stock holdings in the corporation is equal to the amount for which he justified and: *Provided further*, That such fact is expressly stated in his affidavit of justification.

(7) *Affidavit of individual surety*. Standard Form 28 (November 1950 Edition) will be used in connection with the justification of an individual surety.

(c) *Partnerships as sureties*. A partnership or other unincorporated association, as such, will not be accepted as a surety. The individual members of the partnership or association may, of course, if they meet the requirements of (b) above qualify as sureties. Individual members of a partnership or association will not, however, be acceptable as sureties on bonds under which the partnership or association, or any co-partner or member thereof, is the principal obligor.

(d) *Substitution or replacement of a surety*. In case of financial embarrassment, failure or other disqualifying cause on the part of a surety under a bond, the Head of the Procuring Activity concerned will require the substitution of a new surety satisfactory to him.

§ 599.203 *Consent of surety*. The following forms of consents of surety are authorized for use:

(a) *Consent of surety to a modification providing for an increase in the penal sums of bonds previously given*.

CONSENT OF SURETY

Date _____

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby. The principal and surety further agree that on and after the execution of this consent, the penalty of the aforementioned performance bond or bonds is hereby increased by _____ dollars,² and the penalty of the aforementioned payment bond or bonds is hereby increased by _____ dollars.¹

[SEAL]

(Individual principal)² _____

(Business address) _____

(Corporate principal)² _____

(Business address) _____

By _____

[AFFIX CORPORATE SEAL]

(Corporate Surety) _____

(Business address) _____

By _____

[AFFIX CORPORATE SEAL]

In presence of _____

(Address) _____

Attest: _____

¹ Here fix an amount of increase at least in the same proportion that the penalty on the original bond bears to the contract price on the original contract. The penalty of the payment bond shall not be increased beyond two million five hundred thousand dollars.

² This consent shall be executed concurrently with the execution of the attached modification by the same person who executes the modification.

(b) *Consent of surety without providing for an increase in the penal sums of bonds previously given*.

Consent of Surety is hereby given to the foregoing contract modification, and the surety agrees that its bond or bonds shall apply and extend to the contract as modified or amended thereby.

SUBPART C—INSURANCE

§ 599.309 *Scope of subpart*. Supplementary to, but consistent with subpart

C, Part 409 of this title, this subpart sets forth insurance policies and procedures in connection with procurement contracts.

§ 599.300-1 *General policy*. Insurance coverage will be required in connection with Army Establishment contracts where (a) mandatory by law; or (b) it is considered desirable to utilize the organization, facilities or other services of the insurance industry. (The word "coverage" is here used advisedly, since in some jurisdictions self-insurance by the contractor is permissible in lieu of insurance purchases.) Insurance purchases may be authorized where commingling of property and operations or circumstances of ownership and degree of responsibility imposed by contract make the carrying of insurance reasonably necessary for protection of the several interests concerned.

§ 599.301 *Insurance in connection with fixed-price contracts*. The requirements under applicable laws, such as state laws governing workmen's compensation and employers' liability coverage and Federal laws such as the Federal Longshoremen's and Harbor Workers' Act where applicable, or, in the case of common carriers, cargo insurance as required by Interstate Commerce regulations, are sufficient to compel the contractor to comply with such laws. The Contracting Officer will not therefore impose insurance requirements other than evidence from the contractor that such laws have been complied with. Where a performance bond supports the contract such evidence will not be necessary.

(a) *Insurance on Government property*. Under the degree of responsibility for Government property established by contract clause the purchase or non-purchase of property insurance is discretionary with the contractor and insurance requirements will not be imposed by the Contracting Officer.

(b) *Insurance in special cases*. In special cases, when it is deemed necessary in connection with the performance of a contract, other types of insurance may be required, to the extent determined to be necessary by the Head of the Procuring Activity.

§ 599.302 *Insurance in connection with cost-reimbursement type contracts*.

(a) The kinds of insurance enumerated in §§ 599.302-1, 599.302-2, and 599.302-3, following will ordinarily be required by the Contracting Officer unless the contractor is relieved by statute from liability and elects to invoke such statutory immunity or has an acceptable program of self-insurance already in effect. In special cases other types of insurance may be required to the extent determined to be necessary by the Head of the Procuring Activity.

(b) The Contracting Officer will ascertain and advise the Head of his Procuring Activity, prior to completing the placement of insurance under the contract, as to whether (and if so, to what extent) the contractor has cost-reimbursement type contracts with any other agency of the Department of Defense

at the proposed location or adjacent thereto. This information should be readily obtainable from the contractor and will be used by the Head or Heads of the Procuring Activities concerned to determine whether contracts can be combined for the purposes of insurance in order to be eligible for more favorable rate treatment.

§ 599.302-1 Workmen's compensation and employers' liability insurance. (a) Workmen's compensation insurance protects the employer against liability imposed by a workmen's compensation law to pay benefits and furnish care to employees injured, and to pay benefits to dependents of employees killed, in the course of and because of their employment. Employers' liability insurance protects an employer against claims for damages which may arise out of injuries to employees in the course of their work in cases not covered by the compensation law. Such insurance will be required, endorsed to provide:

(1) Occupational disease coverage in jurisdictions where the workmen's compensation law does not cover all occupational diseases, in limits of \$50,000 per person in any one case and \$100,000 for any one policy year;

(2) In those jurisdictions where there is a "per accident" limitation coverage under paragraph One (b) of the insurance policy, additional limits up to \$100,000 for each accident, or, where there is a "per person" limitation under this paragraph, additional limits up to \$50,000 per person;

(3) In jurisdictions where workmen's compensation coverage is carried in a State Fund which does not provide the protection afforded by the requirements of subparagraphs (1) and (2) of this paragraph, employers' liability insurance will be purchased, endorsed to provide this coverage.

(b) Where such insurance is purchased for contracts to be performed outside the limits of the United States, its territories and possessions, the endorsements required by paragraph (a) (1), (2), and (3) of this section may be modified in accordance with instructions issued by the Head of the Procuring Activity concerned provided that higher monetary limits are not authorized.

(c) The Longshoremen's and Harbor Workers' Compensation Act, as amended (42 U. S. C. Ch. 11, 12, as amended by 56 Stat. 1035) provides that workmen's compensation benefits are applicable to all employees of any contractor with the United States on any military, air or naval defense base other than contractors or subcontractors engaged exclusively in furnishing materials or supplies. Where it is desired that the benefits under this law be waived with respect to labor employed outside the limits of the United States (48 states and the District of Columbia), the Head of the Procuring Activity will request such waiver by applying to the Bureau of Employees' Compensation, Department of Labor, through Contract Insurance Branch, Special Financial Services Division, Office of the Chief of Finance, Washington 25, D. C.

(d) Workmen's Compensation benefits will be paid to all employees of any contractor with the United States where waiver is obtained as provided by paragraph (c) of this section in accordance with the workmen's compensation or similar laws of the national, state or local government where contract performance occurs.

§ 599.302-2 Comprehensive general liability insurance. (a) This insurance protects the insured against loss due to all claims for damages arising from his business premises or operations (except those arising from motor vehicles away from the premises, those covered by any workmen's compensation law, and other exclusions stated in the policy). This insurance will be required with limits of \$50,000 per person, \$100,000 per accident.

(b) General liability insurance for damage to property of others may be purchased under the general liability policy where, in the opinion of the Contracting Officer, the exposure under the contract operations is such as to warrant obtaining the experienced claims and investigating services of the insurance carrier in the event of extensive damage to property of others. It is contemplated that this form of coverage will be necessary only for contractors engaged in the handling of high explosives or in extra-hazardous research and development activities. Prior approval for the purchase of this type of insurance will be obtained from the Head of the Procuring Activity, and limits of \$50,000 per accident with an aggregate limit of \$100,000 for each year of policy coverage will be considered adequate. However, where commingling of operations permits the Government's protection at a nominal cost under insurance carried by the contractor in the course of his commercial operations, the participation in such insurance will be deemed in the best interests of the Government.

(c) Products liability insurance protects the insured for damages arising out of the consumption, handling or use of a product. This insurance will be required where a contractor under the authority of his contract operates a commissary or other similar facility for dispensing food. Such insurance, when necessary, will be added by endorsement to the general liability policy with limits of \$50,000 per person and \$100,000 per accident for each year of policy coverage.

(d) Contractual liability insurance protects the contractor against loss arising under assumption of liability by agreement. This insurance is provided by the comprehensive general liability policy where a contractor has assumed liability under:

- (1) A lease of premises;
- (2) An easement agreement;
- (3) An agreement required by municipal ordinance;
- (4) A sidetrack agreement; or
- (5) An elevator or escalator maintenance agreement.

The purchase of insurance for other assumed liability may be approved where assumption of such liability by the contractor has been authorized and the Head of the Procuring Activity determines that the purchase of such insurance is necessary.

(e) Where insurance prescribed by this § 599.302-2 is purchased for contracts to be performed outside the limits of the United States, its territories and possessions, the Head of the Procuring Activity is authorized to revise downward the monetary limits prescribed in this section.

§ 599.302-3 Automobile liability insurance. Automobile public liability and property damage insurance will be required with limits of \$50,000 per person and \$100,000 per accident for bodily injury liability and \$5,000 for property damage liability on the comprehensive policy form covering all owned, non-owned, hired and Government-furnished motor vehicles which will be used in the contract operations where use will not be limited exclusively to the premises on which the work under such contract is performed. When such insurance is purchased for contracts to be performed outside the limits of the United States, its territories and possessions, the Head of the Procuring Activity is authorized to revise downward the monetary limits prescribed herein.

§ 599.350 Boiler and machinery insurance. (a) This type of insurance protects the contractor against loss due to accidents arising from boilers, pressure vessels, or machinery. The chief value of this insurance is the inspection service afforded under the insurance policy by qualified insurance personnel. The purchase of such insurance by Army Establishment cost-reimbursement type contractors is not authorized as an item of reimbursement. The Army maintains within the continental United States for the purpose of obtaining boiler inspection service on certain types of boilers, a contract with a recognized insurance company. Among the types serviced by this contract are the following: "All Government-owned boilers located at military installations operated by private contractors and all privately owned boilers located at military reservations." Accordingly, where steam boilers are placed in initial operation under the contract, the Contracting Officer will so notify his continental Army Commander and request that arrangements be made for the boilers to be included for inspection under the Army contract.

(b) In areas outside the continental United States boiler and machinery insurance may be purchased where insurance companies are available and can render adequate inspection service. Where such service is not available, boiler and machinery insurance will not be purchased.

§ 599.351 Group insurance plans. Group life insurance plans and such other forms of insurance as are provided voluntarily to employees in order to furnish benefits in the event of death, disability, dismemberment, hospitalization, surgical or medical care will be subject to review by the Head of the Procuring Activity. The purpose of this requirement is to ascertain that greater benefits are not being extended under the cost-reimbursement type contract.

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than those granted to employees under the contractor's regular commercial operations. When an existing schedule is being increased, such schedule will also be referred to the Head of the Procuring Activity for the same purpose. Where employees under the cost-reimbursement type contract are added to the contractor's already existent group life or similar-type insurance policies, provision should be made at contract termination to see that any experience refund due from the last year of contract operation will be credited proportionately to the contract.

§ 599.352 Employee retirement, pension, or profit-sharing plans. The basis for allowability of costs under cost-reimbursement type contracts for such plans is fully set forth in Part 414 of this title (Contract Cost Principles). Such plans will be subject to review and approval by the Head of the Procuring Activity.

§ 599.353 Insurance on Government property. It is the policy of the Department of the Army not to require or approve insurance covering loss of or damage to property, legal title to which is in the United States, used in connection with cost-reimbursement type contracts. This principle of non-insurance rests to a large degree upon savings to the Government obtained by eliminating the cost of insurance which would otherwise be added to the contract cost. Where savings are trivial and the contractor's existent insurance policies may be utilized to afford protection thereunder for Government property in its care, custody, or control, this policy of non-insurance will not be enforced. Ordinarily, however, the contractor will be relieved of liability for loss or damage to Government property in accordance with the provisions contained in the Government Property clause of the contract. Such losses are intended to include those caused by any peril while the property is in transit off the contractor's premises, or caused by any of the following perils while the property is on the contractor's or a subcontractor's or other premises or by removal therefrom because of any of the following perils:

(a) Fire; lightning; windstorm, cyclone, typhoon, tornado, hail; explosion; riot, riot attending a strike, civil commotion; vandalism and malicious mischief; aircraft or objects falling therefrom; vehicles running on land or tracks, excluding vehicles owned or operated by the contractor or any agent or employee of the contractor; smoke; sprinkler leakage; earthquake or volcanic eruption; flood, meaning thereby rising of rivers or streams; enemy attack or any action taken by the military, naval, or air force of the United States or its allies in resisting enemy attack.

(b) Upon the happening of loss or damage to Government property caused by the above-named perils the contractor shall communicate with the Contracting Officer and shall otherwise proceed in accordance with instructions set forth in the governing contract clause. The contractor may, upon direction of the Contracting Officer, employ the services of a loss and salvage

organization designated by the Contracting Officer. One or more of these organizations will be found listed in the local telephone directory of the nearest city of reasonably large population. They are known variously as the General Adjustment Bureau, Inc., the Underwriters Adjusting Company, and the Western Adjustment and Inspection Company. The services of these organizations are performed for the Government within the continental United States on a cost plus traveling expense basis.

§ 599.353-1 Liability for loss. The contractor's relief from liability for loss of or damage to Government property in his care, custody, or control is intended to place the contractor in the same position he would occupy if commercial insurance policies providing broad protection were procured by him against the named perils.

§ 599.354 General statement. The required or permitted forms of insurance and instructions set forth in §§ 599.302 through 599.353 are intended as basic principles to be applied in connection with insurance on cost-reimbursement type contracts where the contract operations are separately insured. Where commingling of commercial and Government operations make separate insurance impracticable, §§ 599.302 through 599.353 will necessarily not remain applicable.

§ 599.355 War projects insurance rating plan. For cost-reimbursement type contracts executed within the continental United States (48 States and the District of Columbia) and performed outside the continental United States there is available a special plan for the purchase of workmen's compensation and employers' liability, comprehensive general liability and automobile liability and property damage insurance. This is a comprehensive retrospective rating plan for premium control. The provisions of this plan may not be applicable to all cost-reimbursement type contracts for work performed outside the continental United States, and in arriving at a determination as to its applicability, the Head of the Procuring Activity will give consideration, among other factors, to the following:

(a) Nationality of the employees concerned and the applicability of the Longshoremen's and Harbor Workers' Act as amended, or the propriety of waiving the provisions of that law; (see § 599.302-1 (c))

(b) Laws and customs of the country or countries concerned;

(c) Treaties involved;

(d) Insurance facilities available;

(e) Medical and hospital facilities available.

The formula and administrative procedures involving the use of the special plan may be obtained from the Contract Insurance Branch, Special Financial Services Division, Office of the Chief of Finance, Washington 25, D. C.

§ 599.356 Insurance carrier. A cost-reimbursement type contractor will select his own insurance carrier, subject

to approval by the Head of the Procuring Activity as to compliance with the following established Department of Defense minimum standards. These standards may be deviated from by the Head of the Procuring Activity in the case of foreign insurance carriers operating outside the continental United States upon assurance of financial responsibility of such carriers.

(a) The carrier must have an unobligated minimum surplus of \$350,000;

(b) In the case of a contract of casualty insurance, other than Workmen's Compensation insurance, the financial responsibility of the insurance carrier must be such that the policy will not expose it in a single accident or occurrence to a loss (1) in the case of a fixed-premium carrier of more than 10 percent of its total capital stock and surplus, or (2) in the case of a dividend-paying carrier of more than 10 percent of its net assets.

(c) In the case of Workmen's Compensation insurance, the insurance carrier shall have (1) in the case of a fixed-premium carrier, a total capital and surplus of at least \$1,000,000, or (2) in the case of a dividend-paying carrier, at least \$1,000,000 of net assets.

§ 599.357 Approval required. All plans, policies, and rates for insurance coverages in connection with cost-reimbursement type contracts will be subject to approval by the Head of the Procuring Activity, and it shall be within the authority of such office to require a change of plan if the type selected by the contractor is not deemed to be that most advantageous to the interests of the Government. Copies of all policies will be forwarded by the Head of the Procuring Activity to the Contract Insurance Branch, Special Financial Services Division, Office of the Chief of Finance, Washington 25, D. C.

(a) Where the contract operations are separately insured under any form of retrospective rating plan, losses and final premium costs assigned to the policies involved will be subject to review and approval of the Contract Insurance Branch, Special Financial Services Division, Office of the Chief of Finance, Washington 25, D. C.

(b) Where the contract operations are jointly insured with the contractor's commercial operations, the proportion of Government interest and amount of premium involved will be the governing factors in determining the necessity for maintenance of Government control.

§ 599.358 Action on termination of contract. Generally, the contract settlement involved in cost-reimbursement type contracts will have been completed prior to the required lapse of time for final settlement under any form of retrospective rating plan of insurance. Therefore, in such settlement the insurance transactions, where the War Projects Rating Plan or other retrospective plan of insurance is involved, will be excepted and the Contracting Officer will agree that any remaining credits due in connection with the insurance or any outstanding obligations of the contractor with respect to insurance will be as-

sumed by the United States Government.
 § 599.359 Assignment to Government of premiums due under policies written under the department rating plan or other retrospective rating plan of insurance upon termination or completion of cost-reimbursement type contracts. (a) The following form will be used for accomplishing the action required by § 599.358 of assigning to Government the interest of a cost-reimbursement type contractor in return premiums, premium refunds, etc., on insurance policies written under the War Projects Insurance Rating Plan § 599.355 or other retrospective rating plan upon termination or completion of the contract, when the Government has assumed the payment of the contractor's obligations for further premium payments under such policies.

ASSIGNMENT TO GOVERNMENT

Under (here name type of contract) Contract No. _____ dated _____ between the United States of America (hereinafter called the Government) and _____ (hereinafter called the Contractor).

The Government having assumed and become liable for the obligation of the Contractor for premiums under Policies Nos. _____ issued by the _____ Insurance Company, the Contractor does hereby assign, transfer, and set over to the Government as of the date hereof, all of his right, title and interest in and to all return premiums, premium refunds, dividends and any other moneys due or to become due the Contractor in connection with such policies.

In witness whereof, the Contractor has executed this Assignment this _____ day of 195____.

[CORPORATE SEAL] CONTRACTOR,

By _____

Attest:

Secretary

Accepted:

UNITED STATES OF AMERICA,

By _____

Contracting Officer

(b) This Assignment to Government will be executed in a sufficient number of copies to serve the purposes of the cognizant Procuring Activity, and the Head of the Activity will forward one copy to the Contract Insurance Branch, Special Financial Services Division, Office of the Chief of Finance, Washington 25, D. C. The Contracting Officer will forward the original by registered mail, return receipt requested, to the home office of the insurance company involved. The letter accompanying this form will specify that all checks to cover premiums, etc., are to be made payable to the Treasurer of the United States.

§ 599.360 Overseas. In those areas outside the United States, its territories and possessions, where the insurance coverages required in connection with cost-reimbursement type contracts are not available because of the lack of competent insurance carriers with acceptable financial responsibility as determined by the Head of the Procuring Activity, the Contracting Officer is authorized to waive such insurance requirements. In these cases the Government will assume liability as a self-insurer.

PART 600—FEDERAL, STATE, AND LOCAL TAXES

Sec.	
600.000	Scope of part.
600.050	Oversea.

SUBPART A—FEDERAL EXCISE TAXES

600.101	Manufacturers' excise taxes (basis and application).
600.101-14	Lubricating oils.
600.105	Tax on transportation of property (basis and application).

SUBPART B—EXEMPTIONS FROM FEDERAL EXCISE TAXES

600.202	Supplies for exportation.
600.203	Supplies for ships and aircraft.
600.206	Other exemptions.
600.207	Tax exemption forms.
600.250	Exemptions from Federal taxes in general.

SUBPART C—STATE AND LOCAL TAXES

600.301	Applicability.
600.302	Tax exemption forms.
600.303	Questions of applicability of tax laws; negotiations.

SUBPART D—CONTRACT CLAUSES

600.401	Fixed-price contracts.
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AUTHORITY: §§ 600.000 to 600.401 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 600.000 Scope of part. Supplementary to, but consistent with Part 410 of this title, this part sets forth policies and procedures in connection with (a) Federal excise taxes, (b) exemptions from Federal excise taxes, and (c) State and local taxes. References in this part are to Subchapter A, Chapter IV of this title (Armed Services Procurement Regulation), Internal Revenue Code, and Bureau of Internal Revenue Regulations. Examples: § 410.101-5 of this title; sec. 3797 (a) IRC; and sec. 316.9, Regulations 46.

§ 600.050 Oversea. Part 410 of this title and this part are applicable in effecting procurement outside the United States, its territories and possessions, where the articles, materials, and supplies so procured were mined, produced, or manufactured in the United States, its territories, and possessions, and where the cost of such articles, materials, and supplies may include therein Federal, State, and local taxes. Every effort will be made to take advantage of all authorized tax exemptions, credits, and refunds, including such exemptions, credits, and refunds as may be authorized by the laws of the foreign country in which procurement is effected.

SUBPART A—FEDERAL EXCISE TAXES

§ 600.101 Manufacturers' excise taxes (basis and application). (a) In general, the manufacturers' excise taxes are based on the sales price. Charges for coverings, containers, and the like, are included in the sales price for purposes of computing the tax. If the amount of the sales price is adjusted upon return of coverings or containers to the seller, the tax should also be adjusted (sec. 316.10, Regulations 46). The tax imposed, however, is not part of the taxable price of the article (sec. 316.11, Regulations 46). Charges for transportation,

delivery, insurance, installation, and similar charges also are excluded in computing the tax (sec. 316.12, Regulations 46).

(b) The lease of an article is considered a sale thereof. In the case of leases or installment sales, the tax is paid proportionately upon each payment (sec. 316.9, Regulations 46; sec. 314.4, Regulations 44).

(c) The tax in general attaches when title passes from the manufacturer (sec. 316.5, Regulations 46; sec. 314.4, Regulations 44). If subsequent reduction is made in the sales price, credit or refund may be obtained by the manufacturer (sec. 316.13, Regulations 46). Claim by a manufacturer for credit or refund must show, among other things, that the tax has not been collected from the purchaser or has been repaid to him or that his written consent to the allowance of the credit or refund has been obtained (sec. 316.204, Regulations 46; sec. 314.64, Regulations 44).

(d) No manufacturers' excise tax is imposed under section 3406, IRC (§§ 410, 101-5—410.101-9, incl., of this title), with respect to any article subject to the retailers' excise tax on sale of jewelry and other items referred to in § 410.102-1 of this title (sec. 3406, IRC).

§ 600.101-14 Lubricating oils. (a) Lubricating oils may be sold tax-free by the manufacturer or producer thereof direct to another such manufacturer or producer for resale, provided the manufacturers are properly registered and bonded and an appropriate certificate in this connection is furnished the seller (sec. 314.42, Regulations 44).

(b) No tax is attached where lubricating oils are sold direct for nonlubricating uses by the purchaser, provided an appropriate certificate in this connection is furnished the seller (sec. 314.13, Regulations 44). Exemptions from tax discussed in this subparagraph (b) will not be claimed, contract prices will not exclude taxes on the basis of those exemptions, and proof of tax exemptions will not be furnished contractors.

§ 600.105 Tax on transportation of property (basis and application). (a) Transportation. The term "transportation" means the movement of property by a person engaged in the business of transporting property for hire, including interstate, intrastate, and intracity or other local movements, as well as towing, ferrying, switching, and the like. In general, it includes accessorial service furnished in connection with a transportation movement, such as loading, unloading, blocking and staking, elevation, transfer in transit, ventilation, refrigeration, icing, storage, demurrage, lighterage, trimming of cargo in vessels, wharfage, handling, feeding and watering livestock, and similar services and facilities (sec. 143.1 (d), Regulations 113).

(b) Coal. The term "coal" includes anthracite, bituminous, semibituminous, and lignite coal, coal dust, and coke and briquettes made from coal (sec. 143.1 (f), Regulations 113).

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(c) *Baggage.* An amount paid, in connection with the transportation of persons, for the transportation of baggage, including incidental charges on account of excess weight, excess value, storage, transfer, special delivery, and the like, or an amount so paid for a special baggage or express car or other conveyance is subject to the tax on the transportation of property if separable from the payment for the transportation of persons and separately shown on the records of the carrier. Otherwise, the tax on the transportation of persons applies (see § 410.104 of this title; sec. 143.14 (c), Regulations 113).

SUBPART B—EXEMPTIONS FROM FEDERAL EXCISE TAXES

§ 600.202 Supplies for exportation—

(a) *Exemption based upon exportation.* Exemption is available (1) from the manufacturers' excise taxes (§ 410.101, et seq., of this title) and the retailers' excise taxes (§ 410.102, et seq., of this title) with respect to sales for export and (2) from the tax on the transportation of property (§ 600.105) with respect to property in course of exportation (secs. 2406, 2705, 3449, I. R. C.; sec. 314.25—314.27, Regulations 44; secs. 316.25—316.27, Regulations 46). (See paragraph (b) of this section); secs. 320—21—320—22, Regulations 51; secs. 143—30—143—35, Regulations 113. These exemptions may be claimed under the circumstances set forth in § 410.202 of this title.

(b) *How to claim export exemptions.* (Sec. 316.25—316.27, Regulations 46, see paragraph (a) of this section.)

(1) *Sales for export.* (i) To exempt from tax a sale for export it is necessary that two conditions be met, namely (a) that the article be identified as having been sold by the manufacturer for export and (b) that it be exported in due course.

(ii) An article will be regarded as having been sold by the manufacturer for export if the manufacturer has in his possession at the time title passes or at the time of shipment, whichever is prior (a) a written order or contract showing that the manufacturer is to ship the article to a foreign destination; or (b) where delivery by the manufacturer is to be made within the United States, a sworn statement from the purchaser showing (1) that the article is purchased to fill existing or future orders for delivery to a foreign destination; or that the article is purchased for resale to another person engaged in the business of exporting, who will export the article, and (2) that such article will be transported to its foreign destination in due course prior to use or further manufacture and prior to any resale except for export.

(iii) The written order or contract of sale or the sworn statement referred to in subdivision (ii) (a) and (b) of this subparagraph suspends liability for the payment of the tax by the manufacturer on such sales for export for a period of six months from the date when title passes or the date of shipment, whichever is prior. If within such period the manufacturer has not received and attached to the order or contract, or sworn statement, proper "proof of exportation" (see subparagraph (2) of this paragraph), then the temporary suspension

of the liability for the payment of the tax ceases and the manufacturer shall include the tax on the sale of such article in his return for the month in which such 6-month period expires.

(iv) The exemption provided herein is limited to sales by the manufacturer for export and is not applicable in cases where sales of taxable articles are made from a dealer's stock for export even though actually exported.

(2) *Proof of exportation.* (i) Exportation may be evidenced by (a) a copy of the export bill of lading issued by the delivering carrier, or (b) a certificate by the agent or representative of the export carrier showing actual exportation of the article, or (c) a certificate of landing signed by a customs officer of the foreign consignee showing receipt of the article.

(ii) In any case where the manufacturer is not the exporter, such manufacturer must have in his possession an affidavit from the person to whom he sold the article stating that the article was in fact exported in due course by him or was sold to another person who in due course exported the article. This affidavit must state what evidence is available to show that the article was in fact exported in due course prior to use or further manufacture and prior to resale in the United States other than for export. Such evidence must be that described in subdivision (i) (a), (b), or (c) of this subparagraph, and the affidavit must show where such evidence is readily available for inspection by Government officers.

(iii) In all cases the sales records together with the evidence of exportation must be preserved by the manufacturer for a period of at least four years from the last day of the month following the sale, and must be readily accessible for inspection by internal revenue officers.

(iv) In any case where the manufacturer does not have in his possession within the 6-month period, proof of exportation as outlined herein, the manufacturer must pay the tax involved. If proof of exportation later becomes available, a claim for refund of any tax paid may be filed on Form 843, or a credit may be taken upon any subsequent monthly return, but such action must be taken within the 4-year period of limitation prescribed by section 3313, I.R.C.

(c) *Shipments to possessions of the United States.* (1) Sections 2705 and 3449, I.R.C., and applicable Treasury Regulations authorize an exemption from manufacturers' excise taxes with respect to sales for export or for shipment to a possession of the United States, provided such exportation or shipment is effected within six months after title passes to the purchaser. (Regulations 44, secs. 314.25—314.27; Regulations 46 secs. 316.25—316.27.)

(i) It is the policy of the Department of the Army to purchase from manufacturers, producers, and importers on a tax exclusive basis, as authorized by sections 2705 and 3449, when all of the following conditions are present:

- (a) The purchase is a substantial one;
- (b) Exportation or shipment to a possession is intended at the time of purchase and exportation, or shipment will

follow immediately after delivery from the manufacturer.

(ii) To exempt from tax a sale for export or shipment to a possession of the United States, it is necessary that two conditions be met:

(a) That the article be identified as having been sold by the manufacturer for export or shipment to a possession.

(b) That it be exported or shipped to a possession of the United States in due course. (Regulations 44, sec. 314.25.)

(iii) With respect to condition in subdivision (ii) (a) of this subparagraph, the words "for export or shipment to a possession" stamped on the contract or written purchase order has been approved by the Bureau of Internal Revenue as satisfactory evidence that the manufacturer's sale of the article has been made for export or shipment to a possession of the United States. With respect to condition in subdivision (ii) (b) of this subparagraph, the proof of exportation or shipment to a possession of the United States required under Regulations 44, Section 314.26, shall be furnished the manufacturer by the Contracting Officer. Such proof shall be in the form of an affidavit stating that the articles have in fact been exported or shipped to a possession of the United States. The affidavit shall also state where a copy of the export bill of lading is available for inspection. The Port of Embarkation shall be required to furnish certification of export to the Contracting Officer together with a statement describing where the applicable export bill of lading is being retained.

(2) The term "possession of the United States" as used in this paragraph includes the Panama Canal Zone, Virgin Islands, Guam, Puerto Rico, American Samoa, Wake, and the Midway Islands. (Regulations 46, sec. 316.1; Regulations 44, sec. 314.1). The exemption does not apply with respect to sales of articles for shipment to the territories of Alaska and Hawaii for the reason that these territories are by statutory definition included in the term "United States". (Regulations 46, sec. 316.27; Regulations 44, sec. 314.28.)

(3) Following is the form of affidavit to be used as proof of exportation or shipment to a possession:

(Date)

(Contractor)
The undersigned does hereby certify that

(Quantity and description of articles)
which were purchased for export under

(Contract No.)
were in fact exported to a foreign country or possession of the United States (other than Alaska or Hawaii) and a copy of export bill of lading No. _____ or Loading Manifest No. _____ pursuant to which the articles were shipped, is being retained in the files of _____

(Indicate office)

Contracting Officer

§ 600.203 Supplies for ships and aircraft. (a) The term "vessels of war" of the United States or of any foreign nation includes aircraft owned by the United States or by any foreign nation

and constituting a part of the armed forces thereof. The terms "fuel supplies", "ships' stores", "legitimate equipment" includes all articles, materials, supplies, and equipment necessary for the navigation, propulsion, and upkeep of vessels (sec. 3451, I. R. C.; sec. 314.28, Regulations 44, sec. 316.28, Regulations 46).

(b) Under Treasury Regulations this exemption, as it relates to aircraft is available only to purchases made direct from manufacturers or producers, not to purchases from dealers or distributors.

(c) Serious administrative burdens would be imposed if the exemption described in § 410.203 of this title were to be claimed on articles of a character usable either (1) as supplies or legitimate equipment for vessels of war including aircraft, or (2) otherwise.

(d) The exemption will not be claimed, contract prices will not exclude Federal excise taxes on the basis of that exemption, and proof of exemption will not be furnished to contractors, except that the action above may be taken in connection with purchases of the following items:

(1) Aviation gasoline.

(2) Lubricating oil suitable only for aircraft engines.

(3) Aircraft tires and inner tubes.

(4) Aerial photographic cameras including gun cameras, lenses, apparatus, equipment, and films therefor.

§ 600.206 Other exemptions. (a) This section applies only to Federal excise taxes imposed by the following chapters of the Internal Revenue Code: Chapter 19 (Retailers' excise taxes—see § 410.102, et seq., of this title); Chapter 25 (pistols and revolvers—see § 410.103 of this title); Chapter 29 (manufacturers' excise taxes—see § 410.101, et seq., of this title); and Chapter 30 (transportation and communication—see §§ 410-104 and 410.107 of this title).

(b) When any Procuring Activity has responsibility for procurement or purchase of any articles subject to Federal excise taxes under any other chapter of the Internal Revenue Code, that Procuring Activity may prescribe such rules, governing the securing of exemption from those taxes, as it may deem proper, following approval of the Assistant Chief of Staff, G-4 Department of the Army (Chief, Current Procurement Branch), who is responsible for coordination with The Judge Advocate General.

§ 600.207 Tax exemption forms. The forms and procedures described in this section are applicable, as far as exemptions from Federal excise taxes are concerned, only with respect to the exemptions specified in §§ 410.201, 410.203 and 410.205 of this title.

(a) **Standard tax exemption forms.** The following standard tax exemption forms have been prescribed:

Standard
Form No.

U. S. Government Tax Exemption Certificate.....	1094
Cover of U. S. Government Tax exemption certificate book (front, outside and inside; back, outside).....	1094-A
Tabulation sheet (insert).....	1094-B
U. S. Government tax exemption identification card.....	1094-C

(b) **U. S. Government Tax Exemption Certificate, Form 1094.** U. S. Government Tax Exemption Certificate Form 1094 will be issued by the appropriate officer where required by the contract to supply proof of exemption with respect to those taxes which have been excluded from the contract price, as follows:

(1) All Federal excise taxes from which exemption is available on the basis of purchase for the use of the United States. (See § 410.203 of this title, in connection with exemption under section 3451, Internal Revenue Code.)

(2) All State and local taxes, except when a different form is required by the State or local tax authority. (See § 600.301.)

(c) **Supply and control of standard forms.** (1) Standard Forms 1094, 1094-A, 1094-B, and 1094-C will be requisitioned as prescribed in AR 310-90.

(2) Those forms will be subject to special control as prescribed in paragraph 12, AR 310-100.

(3) In addition to the special control prescribed by paragraph 12, AR 310-100, the following will govern in the situations set forth:

(i) Certificates executed but unused, or erroneously issued, mutilated, or otherwise rendered unserviceable, will be returned to the issuing officer, who will destroy the certificates and account therefore pursuant to paragraph 12e, AR 310-100.

(ii) The officer who issued a tax exemption certificate which has been lost or destroyed is authorized to issue a replacing certificate to the contractor or other proper party as follows:

(a) Where the certificate is lost or destroyed after it is issued to the contractor, the contractor must (1) establish to the satisfaction of the issuing officer that the certificate was lost or destroyed, (2) submit an affidavit setting forth the circumstances, (3) request the issuance of a replacement certificate.

(b) Where the tax exemption certificate is lost or destroyed by an Army activity, the replacing certificate will be requested by and issued to the Army activity cognizant of its loss.

(iii) Replacement certificates will bear the following statement, using the words applicable: This Certificate Is Issued To Replace No. _____ Which Has Been Lost (Destroyed).

(d) **Who may execute tax exemption certificates.** (1) Tax exemption certificates will be executed only by those officers and Federal employees who have been supplied with a Standard Form No. 1094-C, U. S. Government tax exemption identification card.

(2) The identification card of authorized officers and employees of Procuring Activities responsible for purchasing at an installation will be signed by the commanding officer. Identification cards supplied to other officers and Federal employees will be signed by the officer who furnished such officer or employee with tax exemption certificates.

(e) **Aircraft and vessels of war supplies and equipment tax exemption certificate.** (1) The following form is prescribed by sec. 314.28, Regulations 44 and sec. 316.28, Regulations 46:

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on certain vessels (sec. 3451, IRC)).

19

(Date)

The undersigned here certifies that he is (1) or (2), whichever is appropriate)

(1) _____ (Owner officer, or charterer)

(2) Agent of _____ who is (Name of principal)

_____ of (Owner or charterer) (Name of vessel)

and that the article or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on a vessel belonging to the following class:

(Here state whichever of the following classes enumerated in Section 3451, IRC, is appropriate:

(1) Vessels engaged in foreign trade.

(2) Vessels engaged in trade between the Atlantic and Pacific ports of the United States.

(3) Vessels engaged in trade between the United States and any of its possessions.

(4) Vessels employed in the fisheries or whaling business.

(5) Vessels of war of the United States or a foreign nation.

If the articles are purchased for use on civil aircraft engaged in trade as specified in (1) or (3) above, state the name of the country in which the aircraft is registered.

The undersigned understands that if the article is used for any purpose other than as stated in this certificate, or is resold or otherwise disposed of, he must report such fact to the manufacturer. It is understood that this certificate may not be used in purchasing articles tax free for use as fuel supplies, and other like items above named, on pleasure vessels, or on any type of aircraft except (i) civil aircraft employed in foreign trade or trade between the United States and any of its possessions, and otherwise entitled to exemptions, and (ii) aircraft owned by the United States or any foreign country and constituting a part of the armed forces thereof. It is also understood that the fraudulent use of this certificate to secure exemption will subject the undersigned and all guilty parties to a penalty equivalent to the amount of tax due on the sale of the article and upon conviction to a fine of not more than \$10,000, or to imprisonment for not more than five years, or both, together with costs of prosecution. The undersigned also understands that he must be prepared to establish by satisfactory evidence the purpose for which the article was used.

(Name)

(Address)

(2) The form set forth in subparagraph (1) of this paragraph will be issued by the appropriate officer where required by the contract to supply proof of exemption with respect to the Federal excise taxes from which an exemption is available under section 3451, Internal Revenue Code, such as for fuel supplies, ship stores, and equipment for vessels of war, including aircraft of the armed forces. (See § 600.203, as to the policy with respect to claiming this exemption.)

(f) **Preparation and execution of exemption certificates.** (1) In the preparation of tax exemption certificates the typewriter will be used when practicable; otherwise ink or indelible pencil will be

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used. The use of ordinary lead pencil is prohibited. All blank spaces must be properly filled in or lined out. No exemption certificate, unless fully and properly executed, will be delivered to a contractor, except that the Bureau of Internal Revenue has advised that it is not necessary to state the amount of Federal tax upon the exemption certificate. The amount of tax should be stated, however, if readily available. In a case where Federal excise taxes have been excluded from the contract price of articles or supplies purchased, but the exact amount of the tax cannot be determined at that time, a blanket tax exemption certificate may be issued to cover all sales under the contract. The certificate should cover all articles purchased under the contract, including delivery orders placed thereunder by other officers. As to blanket tax exemption certificates covering purchases under contracts of the Federal Supply Schedule, see paragraph (h) of this section.

(2) A separate certificate for each kind of tax (Federal, State or local) involved will be prepared. In the issuance of these certificates care must be exercised to fill in the blank spaces provided for showing on each certificate the separate amounts of the taxes involved, if known, so that the certificates may be used only for the purpose intended.

(3) Where the supplies or work covered by the contract are not taxable as such and the certificate is to be used for the purpose of obtaining exemption on the articles to be incorporated in the supplies or work covered by the contract, the amount of tax to be shown on the certificate should be stated as "None." No tax should be shown on the certificate except the tax imposed directly upon the supplies or work covered by the contract.

(4) Tax Exemption Certificate Form No. 1094 may be modified as may be necessary with respect to contracts for construction, alterations, improvements, and repairs. The person issuing a tax exemption certificate will, in addition to his signature and title, insert on the lines provided therefor, his identification card number. (See paragraph (d) of this section.)

(g) *When exemption certificates are issued to contractors.* At any time after execution of the contract, a tax exemption certificate (Form 1094) will be executed and delivered to the contractor, upon request, covering Federal excise taxes where supplies are taxable as in this section indicated and are purchased by the Government at a price which is exclusive of tax. In that case, the description of the supplies furnished tax free will be inserted on the tax exemption certificate.

(h) *Blanket tax exemption certificates; contracts under Federal Supply Schedule.* (1) Nothing contained in the regulations in this part will be construed as authorizing the issuance of blanket tax exemption certificates by Heads of Procuring Activities or Contracting Officers covering purchases under contracts of the Federal Supply Schedule. Upon application of the contractor, the Procurement and Accounting Division, Office of the Secretary, will

issue blanket tax exemption certificates as may be necessary to cover all purchases made by Department agencies in Washington, D. C., and in the field under term contracts of the Federal Supply Schedule, Federal Supply Service, General Services Administration.

(2) Contractors are required to indicate the number of the applicable blanket tax exemption certificate on their invoices.

(3) The purchase order need not contain the number of the applicable tax exemption certificate. It is sufficient that it contain a reference to the Federal Supply Schedule contract number.

§ 600.250 Exemptions from Federal taxes in general. Exemptions from Federal taxes which are available under present law and regulations are as follows:

(a) Communications (sec. 3465, I. R. C.).

(b) Transportation of persons (when transportation is furnished on Government transportation requests (sec. 3469, I. R. C.).

(c) Transportation of property (where shipment is on Government bill of lading) (sec. 3475, I. R. C.).

(d) Equipment for use on vessels of war (sec. 3451, I. R. C.).

(e) Purchases for export or shipment to a possession of the United States (sec. 2705 and sec. 3449, I. R. C.).

(f) Supplies sold for further manufacture (sec. 3442, I. R. C.).

(g) Certain petroleum products.

SUBPART C—STATE AND LOCAL TAXES

§ 600.301 Applicability. Tax exemption certificates are also used for establishing exemptions from State and local taxes. In applicable cases, certificates should be prepared in accordance with the requirements of the particular State or local tax authority concerned.

§ 600.302 Tax exemption forms. (a) In most cases, Form 1094 (see § 600.207 (b), above) will be the appropriate form of tax exemption certificate. Except as provided in paragraph (b) of this section, no tax exemption certificate should be issued with respect to a State or local tax unless the contract shows that the price paid by the Government is exclusive of the tax to which the certificate pertains or unless the contractor consents to the deduction of such tax from the contract price and the acceptance of the tax exemption certificate in lieu thereof.

(b) When impossible for any reason to make a purchase by a contract which excludes the amount of State or local tax for the reason that the tax is deemed to be legally inapplicable to Government purchases, a tax exemption certificate on Form 1094 will be executed and delivered to the disbursing officer to whose accounts the vouchers in the transaction pertain, together with a written statement to the effect that the vendor refused such certificate. Tax exemption certificates executed and delivered as prescribed in this paragraph are for the use of the Office of the Chief of Finance in securing a refund of the amount of

the taxes involved. The serial number of the tax exemption certificate will be shown on the payment voucher.

(c) When Form No. 1094 (or other appropriate certificate) executed under the conditions stated above is received in the administrative office (Office of the Chief of Finance), the bureau or office number of the payment voucher will be noted on the certificate and the administrative office (Office of the Chief of Finance) will bill the State or local taxing agency for refund of the taxes paid. The amount collected will be transmitted to the Disbursing Officer for credit to the appropriation from which the vouchers were paid, or to miscellaneous receipts accounts, "4326—Refund, State and Local Taxes," if the appropriation cannot be readily identified. Where the administrative office (Office of the Chief of Finance) fails to secure refund of the amount of taxes paid, it will transmit promptly to the General Accounting Office for use in effecting collection as required by section 236, Revised Statutes, as amended by the Budget and Accounting Act, 1921 (43 U. S. C. 99), the following:

(1) The tax exemption certificates, if available.

(2) All related correspondence with the taxing agency.

(3) Disbursing Officer's voucher number on which payment for the merchandise was made.

§ 600.350 Questions of applicability of tax laws; negotiations. (a) It is desired that uniformity of action on behalf of the Army Establishment in tax matters be maintained. Independent conferences or direct negotiations with State and local tax authorities will not be undertaken by Army Establishment or contractor personnel for the purpose of obtaining exemption, refund, or for determining the applicability of any tax, except upon express authority of the Office of The Judge Advocate General.

(b) Where a specific tax problem occurs which cannot be readily determined by reference to the information set out in this part and Part 410 of this title, the matter should be transmitted through channels with appropriate comments to the Office of The Judge Advocate General (Attn.: Procurement Div.) for advice. This procedure is important where—

(1) The applicability of the tax is not specifically discussed in this Procedure;

(2) State and local tax authorities have adopted or may adopt a position at variance with that taken by the Department of the Army;

(3) Measures are contemplated to protect the interests of the Army with respect to payment of taxes; or

(4) From a study of this part and Part 410 of this title and applicable regulations it appears that there exists a possibility of obtaining refunds of taxes already paid, the economic burden of which has been borne by the United States. Where authorized, of course, contractors may apply directly for refunds;

(5) Obtaining of large scale tax exemptions, credits or refunds in foreign

countries where the assistance of other executive departments is necessary.

SUBPART D—CONTRACT CLAUSES

§ 600.401 Fixed-price contracts.

(a) The clause in § 410.401 of this title, which is approved for use at the option of the Contracting Officer, in fixed-price contracts, will be inserted by all Contracting Officers in all such fixed-price contracts, except where deletion is specifically authorized or where approved printed forms omit such clause.

(b) Authority is granted in effecting procurement outside the United States, its territories, and possessions to substitute the following clause for the clause prescribed in § 410.401 of this title:

TAXES

The contract price includes any and all applicable taxes.

PART 601—LABOR

Sec.

601.000 Scope of part.

601.050 Applicability.

SUBPART A—BASIC LABOR POLICIES

601.101 Labor relations.

601.102 Wage and salary compensation.

601.103 Federal and State labor requirements.

SUBPART B—CONVICT LABOR

601.202 Applicability.

SUBPART C—EIGHT-HOUR LAW OF 1912

601.302 Applicability.

SUBPART D—DAVIS-BACON ACT

601.402 Applicability.

601.403 Department of Labor regulations.

601.450 Predeterminations of prevailing wage rates.

601.451 List of ineligible contractors and disqualified bidders.

SUBPART E—COPELAND ACT

601.502 Applicability.

601.503 Department of Labor regulations.

SUBPART F—WALSH-HEALEY PUBLIC CONTRACTS ACT

601.602 Applicability.

601.603 Responsibilities of Contracting Officers.

601.650 Interpretations not found in publications forwarded Contracting Officers.

601.651 Exceptions not stated in the publications furnished Contracting Officers.

601.652 Other information not found in publications furnished Contracting Officers.

601.653 Procedure for obtaining exemptions with respect to stipulations required by the act.

601.654 List of disqualified persons and firms.

601.655 Wage and Hour and Public Contracts Divisions of the United States Department of Labor Regional Offices; geographical jurisdiction and addresses of Regional Directors.

601.656 Minimum wage determinations.

SUBPART G—FAIR LABOR STANDARDS ACT OF 1938

601.701 Basic statute.

601.750 Regulations of the Administrator.

601.751 Reimbursement of cost-plus-a-fixed-fee contractors for payments in accordance with the act.

601.752 Investigations and inspections.

SUBPART H—NONDISCRIMINATION IN EMPLOYMENT

Sec.

601.801 Basic requirement.

601.850 Interpretations of Executive Order 9346 by the Committee on Fair Employment Practice.

SUBPART I—EMPLOYMENT RESTRICTIONS FOR SECURITY PURPOSES

601.950 Administration.

AUTHORITY: §§ 601.000 to 601.950 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 601.000 *Scope of part.* This part sets forth labor policies and procedures consistent with and supplementary to part 411 of this title.

§ 601.050 *Applicability.* It will be noted that the applicability of the various subparts, and in some cases, of the various sections of a subpart of this part, vary materially. In order to avoid the misapplication of these provisions, the geographical applicability is repeated herein. Guidance in labor matters in those geographical areas for which applicability is not prescribed herein, will be in accordance with labor legislation of the country in which procurement is effected.

SUBPART A—BASIC LABOR POLICIES

§ 601.101 *Labor relations*—(a) *Scope.* All problems arising out of the labor relations of private contractors vitally affect procurement and are an essential part of procurement responsibility. It is requisite, accordingly, that the disposition of these problems receive staff direction and supervision from one source. The Office of The Judge Advocate General is the office designated within the Department of the Army to furnish staff direction and supervision of all contractor labor activities.

(b) *Labor responsibility.* (1) There will be no contacts with national offices of labor organizations or other organizations of the Government in connection with labor matters except after coordination with the Office of The Judge Advocate General. In case of emergency such coordination may be by telephone, in which event the coordination should be direct with the Chief, Industrial Relations Branch of that office.

(2) The Head of the Procuring Activity concerned is authorized to communicate with local labor organizations and the local offices of Federal agencies in connection with labor matters of concern to a particular activity but no action which is not mutually acceptable to the Head of the Procuring Activity and the local organization will be taken without requisite coordination.

(3) The Head of the Procuring Activity is authorized to remove necessary matériel from a strike-bound facility when such action is mutually agreed to by both management and local labor representatives concerned. All such action, however, will be reported, through channels, to the Office of The Judge Advocate General. Failure of the parties to agree to such removal will be similarly reported for appropriate action at the national level.

(4) When any labor dispute significantly affects or threatens to so affect important procurement, the Head of the Procuring Activity will submit a Report of Labor Disputes, Reports Control Symbol JAG-10, by the most expeditious and practical means available to The Judge Advocate General with an informational copy to the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch). Such report will include the following data, to the extent pertinent:

(i) Name and location of manufacturer; name and title of company official contacted (if manufacturer is a subcontractor, include the name and location of the prime contractor(s)).

(ii) Items being produced (if a subcontractor is involved, identify the prime contract items).

(iii) Name and national affiliation of union locals involved; names of local union officials and result of any contacts with same.

(iv) Effect on production of Army matériel.

(v) Detailed description of critical items (if any) which should be removed from plant or continued to be processed there with mutual consent of contractor and union, if obtainable.

(vi) Date of commencement of the dispute and date of important incidents of the dispute such as notice of strike, strikes, lockouts, settlements, etc.

(vii) Statement of any action taken or contemplated by the manufacturer.

• (viii) Contract number(s) and type thereof (fixed-fee, lump-sum, unit price, etc.).

(ix) The issues or probable issues involved.

(x) Estimated number of employees directly and indirectly involved; estimated number who may be involved ultimately, both directly and indirectly; total number of employees at the facility.

(xi) Identity of any cognizant State and/or Federal authority engaged in mediation and conciliation activities.

(xii) Adequacy of plant guards and local police for protection of Government property, indicating whether plant-guard personnel are members of a union and, if so, local number and name, national affiliation, and whether it is expected that they will go on strike.

(xiii) Additional pertinent information including, when applicable, the effect on care and maintenance of Government-furnished equipment or matériel.

In urgent cases it will suffice if only information required by subdivisions (i) through (vi) of this subparagraph is furnished in the initial report. Supplemental reports will be submitted as necessary to report important developments.

(5) Where private contractor employees are engaged in contract work on a post, camp, station, or installation and labor representatives request permission to enter such installation to conduct union business during working hours, the commanding officer may admit such labor representatives, provided: (i) The presence and activities of the labor representatives will not interfere with the

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progress of the contract work involved, and (ii) the entry of such representatives to the installation will not violate pertinent safety and security regulations. In the event that a commanding officer of an installation denies entry to a labor representative, such commanding officer shall, through appropriate channels, submit to the Chief, Industrial Relations Branch, Office of The Judge Advocate General, Washington 25, D. C., a Report of Denial of Admission of Labor Representatives, Reports Control Symbol JAG-11, which will include—(a) names of the labor representatives denied entry; (b) the union affiliation, if known, of such representatives; and (c) reason for denial of entry.

(c) *Applicability.* Section 411.101 of this title and this section are applicable only within the United States, its Territories and possessions.

§ 601.102. *Wage and salary compensation.* (a) Delivery schedules established in connection with all procurement contracts, particularly those of a cost-reimbursement type, will be predicated upon the contractor working normal work-weeks and shifts without recourse to overtime and extra-pay shifts.

(b) Overtime and extra-pay shift deviations may be authorized subject to the following conditions:

(1) The authority for approval of such overtime and extra-pay shift deviations as may be required is hereby delegated, with power of redelegation, to Heads of Procuring Activities.

(2) Utilization of approvals for deviation of the overtime and extra-pay shifts as may be given by the Head of a Procuring Activity, or his designated representative, will be confined to the meeting of essential deadlines necessary to the performance of the contract solely in the interests of the Government.

(3) In granting such approvals, it will be the responsibility of the Head of a Procuring Activity and his designated representative to restrict such overtime and extra-pay shift work to the minimum required for the accomplishment of the specific work for which the deviation was requested and for which the approval was given.

(4) The above policy is not to be construed as forbidding the use of overtime or extra-pay shift work necessitated because of disaster, local operating emergencies, or in the best interests of the Government.

(c) Any case concerning overtime or extra-pay shifts which may arise and which does not fall within the foregoing authorization including cases involving premium rates other than overtime or extra-pay shifts, will be referred to the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch), for consideration.

(d) Section 411.102 of this title and this section are applicable world-wide.

§ 601.103. *Federal and State labor requirements.* This requirement applies even where a contractor, by reason of operating a Government-owned facility located on property owned by the United States, might otherwise be exempt.

(a) *Requests for relaxation of State labor legislation.* There may be cases,

however, in which manufacturers engaged in the production of vital military supplies deem necessary the relaxation of State labor statutes or administrative orders which are restricting or are allegedly restricting such production. In such cases the following procedure will be observed:

(1) The interested contractor will submit the initial request for such relaxation to the State Labor Commissioner or other State officials charged with the enforcement of labor legislation in the State or region where the plant of the manufacturer involved is located.

(2) In the event the contractor's request for relaxation is denied, the Head of the Procuring Activity concerned, if he deems the contractor's request valid, may refer the matter, with his recommendation in respect thereto, to the Office of The Judge Advocate General, through the Assistant Chief of Staff, G-4, Department of the Army (Attn: Chief, Current Procurement Branch), for action. Such referrals should contain the following information:

(i) Provision or provisions of law the relaxation of which is required.
(ii) Extent of relaxation required.
(iii) Criticalness or relative scarcity of the material.

(iv) Circumstances necessitating the relaxation (such as, for example, a shortage in the local supply of skilled labor).

(v) Remedial action being taken by the manufacturer (for example, training).

(vi) Efforts previously made to obtain the relaxation.

(3) Requests for assistance in obtaining a relaxation will be refused in cases in which—

(i) The contractor has not already requested the proper State authorities for such relaxation.

(ii) Such relaxation is clearly unnecessary to maintain essential production.

(iii) The granting thereof would result in a clearly excessive increase in hours of work, in an unreasonable curtailment of rest and lunch periods, or in an undesirable impairment of working conditions.

(b) *Applicability.* Section 411.103 of this title and this section are applicable only within the United States, its territories and possessions.

SUBPART B—CONVICT LABOR

§ 601.202. *Applicability.* (a) Subpart B, Part 411 of this title, and this subpart are applicable only within the continental United States (the 48 States and the District of Columbia).

(b) The prohibition contained in Executive Order 325A does not apply to contracts entered into between the Government and State prisons for the purchase of manufactured items, subject to all of the following limitations:

(1) That such contracts are not prohibited by the law of the State in which the prison is located.

(2) That exemption from the Walsh-Healey Public Contracts Act be obtained, in accordance with procedures prescribed in § 601.653, in cases of contracts exceeding \$10,000.00.

(3) That no purchase from a State prison or other correctional institution will be made of items contrary to the provisions of §§ 404.301 and 594.301 of this title.

(4) That the contract is otherwise proper.

The convict labor clause prescribed by §§ 406.103-15 and 411.203 of this title will be omitted from such contracts.

SUBPART C—EIGHT-HOUR LAW OF 1912

§ 601.302. *Applicability.* The provisions of Subpart C, Part 411 of this title, and this subpart are applicable only within the limits of the United States, its territories and possessions.

SUBPART D—DAVIS-BACON ACT

§ 601.402. *Applicability.* Subpart D, Part 411 of this title, and this subpart are applicable only within the continental United States (the 48 States and the District of Columbia) and its territories (Alaska and Hawaii).

§ 601.403. *Department of Labor regulations.* The regulations of the Secretary of Labor described in § 601.503, where pertinent, are applicable to all contracts subject to the act.

§ 601.450. *Predeterminations of prevailing wage rates.* The Secretary of Labor has discontinued the emergency wartime practice of issuing wage predeterminations on an area basis, and requires a separate request for wage rates for each contract to be awarded by a contracting agency, except where it can be shown that unusual circumstances make it impractical to obtain a wage predetermination for each contract. In each case it will be necessary to explain fully the unusual circumstances which make it necessary to request an area predetermination.

(a) *Responsibility for obtaining predeterminations.* The Chief of Engineers is responsible for obtaining from the Secretary of Labor and for furnishing to the Procuring Activity upon request all predeterminations of prevailing wage rates under the Davis-Bacon Act required in connection with the awarding of contracts of the Army Establishment.

(b) *Responsibility for requesting predeterminations.* The office responsible for the preparation of specifications for projects in excess of \$2,000 is responsible for requesting the appropriate predetermination of wage rates to be contained in the contract. The preparing office will forward such request to the Chief of Engineers (Attn: Legal Division), through appropriate Division Engineer offices, unless direct communication is authorized by appropriate authority. The Chief of Engineers will obtain the predetermination of wage rates from the Secretary of Labor, and forward such predetermination to the requesting office through channels. When contracts specifications are prepared they should include a current wage predetermination. If the wage predetermination is not available when invitations to bid are issued, the specifications will contain a statement that wage rates will be supplied by addendum to the specifications. Contracting Officers will not open bids on projects subject to the

provisions of the Davis-Bacon Act until the requested predetermination of wage rates has been incorporated in the specifications.

(c) *Manner of requesting predeterminations.* Requests for predetermination of wage rates will be made as follows:

(1) Requests will be forwarded on Form DB-11, in triplicate, leaving date, first two lines, and signature block blank. (These forms may be obtained from the appropriate Division Engineers office.)

(2) Classifications requested will be limited to those which it is reasonably sure will be used.

(3) Check will be made with local contractors or contractors' associations, unions, Federal, State, and local officials, and authenticated statements regarding wage rates paid locally should be obtained and forwarded. Statements should include the number of employees employed in each classification. Copies of signed collective bargaining agreements should be obtained from union representatives and forwarded.

(4) Copies of payrolls on Federal contract construction in progress or recently performed under the jurisdiction of the office preparing the request, and any available payroll data on other Federal contracts in the locality will be forwarded.

(5) In emergencies, requests may be made by teletype or telephone direct to the Chief of Engineers (Attn.: Legal Division), stating reason why special handling is necessary. Appropriate Division Engineer Offices will be furnished copies or records of such direct communications.

(6) A request for a review of a predetermination must be made if bids are not to be opened by the expiration date of the predetermination. Predeterminations expire 90 days after the date of the original predetermination or modification thereof. Requests for review will be processed and forwarded in the same manner as requests for original predeterminations.

(7) All requests should be forwarded so as to reach the Chief of Engineers (Attn.: Legal Division) at least 4 weeks prior to advertising or expiration date.

(d) *Enforcement responsibility.* Reference is made to § 411.404 (c) of this title, which places on the Contracting Officer the responsibility for obtaining from contractors weekly payroll records so that such records shall be available for determination as to whether the contractor has complied with the statute.

(e) *Copies of payrolls.* Contracting Officers will obtain copies of these payrolls and check the payrolls at such times and to the extent necessary for the purpose of assuring that all contractors and subcontractors are complying with the applicable laws.

(f) *Contracting Officers' visits.* Contracting Officers will also make such visits to the project and make such checks as are necessary to assure that the contractor is not violating the Davis-Bacon Act by misclassification, disproportionate use of apprentices, or other means. Examples: Use of men classified as laborers and receiving laborers' wage

rates to do journeymen's work; and the employment of an unusually large number of apprentices as compared to journeymen, with the apprentices actually doing journeymen's work. With regard to apprentices, attention is invited to the fact that the Secretary of Labor is now issuing wage determinations setting up the following prescribed standards for the employment of apprentices for the various building crafts:

Apprentices employed pursuant to this determination of wage rates must be registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Federal Committee on Apprenticeship, U. S. Department of Labor; or if no such recognized agency exists in a State, it shall mean a program registered with the Bureau of Apprenticeship, U. S. Department of Labor.

(g) *Notification to contractor.* In the event misclassification of mechanics or laborers is discovered which results in workers receiving less than the prescribed minimum rate of wage for the work actually being performed, the contractor will be notified immediately of the corrective action to be taken and the Contracting Officer will make a report on Standard Form No. 1093 (Schedule of Deductions from Payments to Contractor) executed as completely as possible from his records to the Disbursing Officer. The amounts to be withheld will be equal to the estimated corrective payments required. Such funds will be withheld until evidence satisfactory to the Contracting Officer is furnished showing that corrective payments have been made to the mechanics or laborers involved.

(h) *Cooperation with the Department of Labor.* In the event an investigation of the work being performed under any contract is made by the Department of Labor and thereafter it is indicated to the Contracting Officer that violations of the Davis-Bacon Act, Copeland Act and/or Eight-Hour Law have been discovered, the Contracting Officer will cooperate to the fullest extent practicable with the representative of the Department of Labor in initiating necessary and appropriate corrective action as outlined herein to insure that such violations will not continue.

§ 601.451 List of ineligible contractors and disqualified bidders. The list of persons and firms found by the Comptroller General to have violated the requirements of the Davis-Bacon Act is prepared and issued by the Assistant Chief of Staff, G-4, Department of the Army, for the use and guidance of all interested agencies of the Army Establishment in the Consolidated Listing of Suspended and Ineligible Contractors and Disqualified Bidders. (See § 590.303 (d).)

SUBPART E—COPELAND ACT

§ 601.502 Applicability. The provisions of Subpart E of Part 411 of this title, and this subpart are applicable only within the continental United States (the 48 States and the District of Columbia) and its territories (Alaska and Hawaii).

§ 601.503 Department of Labor regulations—(a) Weekly Affidavit with re-

spect to payments of wages.

The affidavit shall be executed and sworn to by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be in the following form:

STATE OF _____
County of _____

I, _____ (Name of party signing affidavit)
(title), being duly sworn, do depose and say: That I pay or supervise the payment of the persons employed by _____ (contractor or subcontractor) on the _____ (building or work); that during the payroll period commencing on the _____ day of _____ 195_____, and ending the _____ day of _____ 195_____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said _____ (contractor or subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full weekly wages earned by any person, other than permissible deductions, as defined in the regulations under the "Kickback" Act (48 Stat. 948) and described below:

(Paragraph describing deductions, if any.)

(Signature and title)

Sworn to before me this _____ day of _____, 1950. (29 CFR 3.3 (b))

(b) *Exemptions with respect to weekly affidavits.* Upon a written finding by the Secretary of the Army, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements set forth in paragraph (a) of this section, subject to such conditions as the Secretary of Labor may specify. Request for such finding, accompanied by all necessary supporting documents, will be submitted by the Head of the Procuring Activity concerned through the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch) and The Judge Advocate General, in turn, to the Secretary of the Army for action and submission to the Secretary of Labor (29 CFR 3.3 (c)).

(c) *Submission of weekly affidavits and the preservation and inspection of weekly payroll records.* (1) Each weekly affidavit shall be delivered by the contractor or subcontractor, within 7 days after the regular payment date of the payroll period, to the Contracting Officer or such other officer as may be designated for such purpose by the Head of the Procuring Activity concerned.

(2) After such examination and check as may be made, such affidavit or a copy thereof, together with a report of any violation shall be transmitted to the U. S. Department of Labor, Washington 25, D. C., in accordance with § 411.503 of this title.

(3) Each contractor or subcontractor shall preserve his weekly payroll records for a period of 3 years from date of completion of the contract. The payroll records shall set out accurately and completely the name, occupation, and hourly wage rate of each employee, hours worked by him during the payroll period, the full weekly wages earned by him, any deductions made from such weekly wages, and the actual weekly

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wages paid to him. Such payroll records shall be made available at all times for inspection by the Contracting Officer or his authorized representative (29 CFR 3.4 (b)).

(d) *Authorized payroll deductions.* (1) Deductions for the following purposes are permissible:

(i) Where required by Federal, State, or local statutes or ordinances to be made by the employer from the wages earned by the employee.

(ii) *Bona fide prepayment of wages without discount or interest.*

(iii) Deductions required by court process provided that the contractor or subcontractor will not be permitted to make such a deduction in favor of the contractor, subcontractor, or any affiliated person or where collusion or collaboration exists (29 CFR 3.5 (a)).

(2) Any deduction is also permissible which in fact meets the following standards and with respect to which the contractor or subcontractor shall have made written application by registered mail to the Secretary of Labor, a copy of which application shall be sent to the contracting agency by the contractor or subcontractor, setting forth all the pertinent facts indicating that such deductions will meet the following standards:

(i) That such deduction is not prohibited by other law.

(ii) That such deduction is (a) voluntarily consented to by the employee in writing and in advance of the period in which the work was done, and that consent to the deduction is not a condition either for the obtaining of or for the continuance of employment; or (b) that such deduction is for the benefit of the employees or their labor organization through which they are represented and is provided for in a bona fide collective bargaining agreement.

(iii) That from such deduction no payment is made to, nor profit or benefit is obtained directly or indirectly by the contractor or subcontractor or any affiliated person, and that no portion of the funds, whether in the form of a commission or otherwise, will be returned to the contractor or subcontractor or to any affiliated person.

(iv) That the convenience and interest of the employees are served thereby, and that such or similar deductions have been customary in this or comparable situations (29 CFR 3.5 (b)).

(3) After application in good faith, the deduction may be made in accordance with the foregoing standards; provided, however, that if the Secretary of Labor, on his own motion, or on the application of any person or agency affected by the granting of the application, shall conclude at any time, after written notice to the applicant and an opportunity for him to present his views in support of the deduction, that the deduction has not met the foregoing standards, such deduction shall cease to be "permissible" 7 days after the applicant and the Federal agency concerned have been notified of the Secretary's decision.

(4) Upon application to and prior written permission from the Secretary of Labor, and subject to the standards

set forth in subparagraph (2) (i), (ii), and (iv) of this paragraph, deductions may be made by a contractor or subcontractor or any affiliated person, for membership fees in group benefit or retirement associations; for board and lodging; or for other purposes where the Secretary of Labor concludes the deduction is required by compelling circumstances; provided, however, the contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction. A copy of the Secretary's decision shall be sent to the applicant and the Federal agency concerned (29 CFR 3.5 (d)).

(5) In accordance with and subject to the standards set forth in subparagraph (2) (i) through (iv) of this paragraph, general permission is hereby granted to make payroll deductions for—

(i) The payment of the purchase price of United States Defense Stamps and Bonds and United States Tax Savings Notes.

(ii) The repayment of loans to or the purchase of shares in credit unions organized and operated in accordance with District of Columbia, Federal, or State credit union statutes.

(iii) Contributions to a Federal governmental or quasi-governmental agency.

(iv) The payment of dues or premiums to unaffiliated insurance companies or associations for medical or hospitalization insurance where the employer is not required by Federal, State or local laws to supply such insurance or benefits (29 CFR 3.5 (e)).

(6) In any case in which the employee does not have full and actual freedom of disposition of his wage payment, whether made in cash or by check, any restricted payment made to the employee is considered a deduction under the regulations in this part (29 CFR 3.5 (f)).

(7) Nothing herein shall be construed to permit any deduction which the contractor or subcontractor knew, or in the exercise of good faith should have known, did not meet the foregoing standards. In order to insure compliance with this part, the Secretary of Labor may notify the contractor or subcontractor that the deduction will be permitted only if certain conditions with respect thereto are observed. The contractor or subcontractor or any affiliated person shall also comply with such general rules and regulations concerning the deductions as the Secretary of Labor shall make from time to time, notice of which shall have been given to the contractor or subcontractor or any affiliated person making the deduction and to the Federal Agency concerned either directly or through publication in the **FEDERAL REGISTER** (29 CFR 3.5 (g)).

SUBPART F—WALSH-HEALY PUBLIC CONTRACTS ACT

§ 601.602 Applicability. Subpart F, Part 411 of this title, and this subpart are applicable only within the continental United States (the 48 States and the District of Columbia), its Territories (Alaska and Hawaii) and since November 1, 1950 Puerto Rico and the Virgin Islands.

§ 601.603 Responsibilities of Contracting Officers—(a) Publications to be furnished Contracting Officers. The Secretary of Labor has published a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations No. 3, October 1, 1945." This publication, as amended, contains a compilation of the text of the act, the regulations of the Secretary of Labor relating thereto, and pertinent rulings and interpretations. Amendments to this document are published from time to time. The Heads of the Procuring Activities are responsible for furnishing these publications to each of their Contracting Officers.

(b) *Forms.* By arrangement with the Department of Labor and based on the Procurement Action Reports (see § 590.804 (b)), submitted to the Assistant Chief of Staff, G-4, Department of the Army, the Assistant Chief of Staff, G-4, will forward the necessary Department of Labor forms PC-12 (Rev. 3/49) and PC-13, (Rev. 1/50) to applicable contractors. It will, therefore, not be necessary for Contracting Officers to furnish such forms to applicable contractors. The Contracting Officer, when the Walsh-Healey Act is applicable, will submit to the Assistant Chief of Staff, G-4, (Attn.: Chief, Current Procurement Branch) two additional copies of the Procurement Action Report as required by § 590.804 (b).

(c) *Substitute procedure.* The Department of Labor has agreed that for each unclassified or restricted procurement action having a value over \$10,000 and subject to the Walsh-Healey Act, two additional copies of DD Form 350 will be prepared and forwarded with the original to the Assistant Chief of Staff, G-4 (Attn.: Chief, Current Procurement Branch), who will transmit the pertinent parts thereof to the Department of Labor in lieu of Standard Form 99 (Notice of Award of Contract) which has superseded Labor Department Form PC-1. These additional copies will not be prepared for actions bearing a security classification higher than restricted.

(d) *Report of violations of the act.* Report of any violation of representations or stipulations required by the Walsh-Healey Act will be made through channels to The Judge Advocate General for transmission to the Department of Labor.

§ 601.650 Interpretations not found in publications forwarded contracting Officers. (a) It has been held that dry powdered whole milk and dry ice cream mix are perishable, except when packed with inert gas in hermetically sealed cans, and that these two products when packed with inert gas in hermetically sealed cans are not perishable.

(b) The Department of Labor, under date of April 11, 1947, amended section 40 (e) (1), page 25 of Rulings and Interpretations No. 3, October 1, 1945, with respect to coverage of truck drivers employed by oil dealers, to read as follows:

Where the contractor is a dealer, the act applies to employees at the central distributing plant, including warehousemen, compounders, and chemists testing the lot out of which the Government order is filled, the crews engaged in loading the materials in

vessels, tank cars or tank wagons for shipment, and truck drivers engaged in the activities described in section 37 (m) above. However, the contractor is not required to show that the employees at the bulk stations, including truck drivers, are employed in accordance with the standards of the act. (Bulk stations as the term is used herein are intermediate points of storage between a central distributing plant and service stations.)

(c) The Department of Labor, effective September 17, 1948, added a new Article 105 (following Article 104) on page 56 of Rulings and Interpretations No. 3, reading as follows:

ARTICLE 105 (Protection against unintentional employment of underage minors). An employer shall not be deemed to have knowingly employed an underage minor in the performance of contracts subject to the Act if, during the period of the employment of such minor, the employer has on file an unexpired certificate of age issued and held pursuant to Regulations issued by the Secretary of Labor under section 3 (1) of the Fair Labor Standards Act of 1938 (29 CFR, Part 401), showing that such minor is at least 16 years of age, if a male, or at least 18 years of age, if a female.

(d) The Department of Labor, effective September 17, 1948, amended paragraph (b) of Article 501 (Records of Employment) on page 56 of Rulings and Interpretations No. 3, to read as follows:

(b) Date of birth of each employee under 19 years of age; and if the employer has obtained a certificate of age as provided in Article 105, there shall also be recorded the title and address of the office issuing such certificate, the number of the certificate, if any, the date of its issuance and the name, address and date of birth of the minor, as the same appears on the certificate of age.

(e) The Department of Labor, under the date of October 15, 1948, amended the list of perishables contained in section 11 (h), page 7 of Rulings and Interpretations No. 3, so as to change the item of "Eggs, shell, frozen or dehydrated" to read "Eggs: shell, frozen; dried, powdered or dehydrated (except when packed with inert gas in hermetically sealed cans)." The amendment further adds to the list of nonperishables contained in section 11 (i), page 8 of Rulings and Interpretations No. 3 the item: "Eggs: dried, powdered, or dehydrated when packed with inert gas in hermetically sealed cans."

(f) The Department of Labor, effective January 20, 1949, amended paragraph (b) of Article 101 (Manufacturer or Regular Dealer) beginning on page 54 of Rulings and Interpretations No. 3, by adding subparagraphs (5) and (6) reading as follows:

(5) A regular dealer in raw cotton may be a person who owns, operates or maintains a store, warehouse, or other place of business in which materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought for the account of such persons and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles or equipment,

(6) A regular dealer in green coffee may be a person who owns, operates or maintains a store, warehouse, or other place of business in which materials, supplies, articles or

equipment of the general character described by the specifications and required under the contract are bought for the account of such persons and sold to the public in the usual course of business, and whose principal business is such purchase and sale of such materials, supplies, articles or equipment.

(g) The Department of Labor, under date of March 15, 1949, has amended section 11 (h), page 7 of Rulings and Interpretations No. 3, by adding the commodity "edible tallow" to the list of perishables contained therein.

(h) The Department of Labor, under date of April 1, 1949, has amended the second paragraph of Article 103 (overtime), page 55 of Rulings and Interpretations No. 3 to read as follows:

Until otherwise set by the Secretary of Labor the rate of pay for such overtime shall be one and one-half times the basic hourly rate received by the employee. The basic hourly rate shall be the quotient obtained by dividing the total compensation for the work week, less overtime premium, by the total number of hours worked for which such compensation is paid.

§ 601.651 Exceptions not stated in the publications furnished Contracting Officers. Certain of the exceptions stated in the publications furnished Contracting Officers which contain no specific expiration date may have been rescinded by the Secretary of Labor since date of publication. In case of doubt inquiry may be directed to the appropriate Regional Director, Wage and Hour and Public Contracts Divisions, U. S. Department of Labor, indicated in § 601.655, or to The Judge Advocate General.

§ 601.652 Other information not found in publications furnished Contracting Officers. The administrative exemption contained in Article 603 (e), page 57 of Rulings and Interpretations No. 3, October 1, 1945, relating to contracts negotiated with States or Territories of the United States, or with corporations, commissions, or authorities wholly owned and controlled by such States or Territories, was rescinded by the Secretary of Labor on April 1, 1947.

§ 601.653 Procedure for obtaining exemptions with respect to stipulations required by the act. Section 6 of the act permits the Secretary of Labor to make exceptions to the requirement that the representations and stipulations of section 1 of the act be included in department proposals or contracts which are subject to the act.

(a) **Requests for exceptions and review thereof.** All requests of present or prospective contractors for exceptions under section 6 of the act will be addressed to the Head of the Procuring Activity concerned. Such requests will be in writing, and will be transmitted through the appropriate Contracting Officer, and will set forth all pertinent information, including the nature of the requested exception, the need therefor, and any action already taken by the contractor to avoid the necessity for the exception. The Contracting Officer will review each request received from a contractor for:

(1) The urgency of the particular procurement.

(2) The relation of existing production schedules to Army requirements.

(3) The relation of present and past deliveries to production schedules.

(4) The extent to which labor supply is a limiting factor in production and the reasons therefor.

(5) The steps, if any, which have been taken either by the contractor or by any government agency to resolve the labor supply problem.

(6) The extent to which factors inherent in the production processes involved necessitate the requested exception.

(7) The extent to which the productive capacity of the facility or facilities in question is being utilized for Army procurement; and

(8) Any other pertinent data.

(b) **Consultation with regional directors, Department of Labor, and forwarding requests to Heads of Procuring Activities.** (1) If the Contracting Officer believes that the requested exception is appropriate under the circumstances and necessary to meet vital procurement schedules,

(i) He will inform the appropriate regional director of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, of the request for exception and the necessity therefor (a list of such regional directors is given in § 601.655).

(ii) After joint consideration with such regional director, the Contracting Officer, if still of the opinion that the requested exception is appropriate, will transmit the request, together with (a) his written recommendation relative thereto (b) a statement of all the information upon which the recommendation is based and (c) a recital of the steps taken in compliance with the procedure set forth in paragraph (a) of this section and this paragraph to the Head of the Procuring Activity concerned.

(2) This procedure of consulting with such regional directors will be complied with unless such compliance would result in undue delay. The Contracting Officer, in consulting with appropriate regional director, will furnish the Director any pertinent information in his possession which the Director may require for rendering a report in connection with the need for the exception to the Administrator of the Wage and Hour and Public Contracts Divisions.

(c) **Review and processing of requests by Head of Procuring Activity.** If the Head of the interested Procuring Activity concurs in the recommendation of the Contracting Officer, after review of the request and consideration as to whether the need for an exception can be avoided by utilization of alternative facilities, he will forward the request to The Judge Advocate General, through the Assistant Chief of Staff, G-4, Department of the Army (Attn.: Chief, Current Procurement Branch), together with:

(1) A statement of all pertinent data.

(2) His recommendation.

(3) A draft of a letter setting forth the need for the exception, addressed to the Secretary of Labor and prepared for the signature of the Secretary of the Army.

(4) Accompanying draft of a Findings of Fact as required by section 6 of the

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act, prepared for the signature of the Secretary of the Army.

§ 601.654 Lists of disqualified persons and firms. (a) This includes the list of—

(1) Persons or firms found by the Secretary of Labor to have breached or violated contractual representations and stipulations required by the Walsh-Healey Act, published by the Comptroller General.

(2) Persons and firms which have been held ineligible to be awarded contracts subject to the Walsh-Healey Act, published by the Department of Labor.

(b) These lists are prepared and issued, from time to time, by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Current Procurement Branch), for the use and guidance of all interested agencies of the Department of the Army (§ 590.303 (d) of this chapter).

§ 601.655 Wage and Hour and Public Contracts Divisions of the United States Department of Labor Regional Offices; geographical jurisdictions and addresses of Regional Directors.

Region I:¹ Massachusetts, New Hampshire, Maine, Vermont, Connecticut, Rhode Island—18 Oliver Street, Boston 10, Mass.

Region II: New York and New Jersey—341 Ninth Avenue, New York 1, N. Y.

Region III:² Delaware, Maryland, Pennsylvania, West Virginia—1216 Widener Building, Chestnut and Juniper Streets, Philadelphia 7, Pa.

Region IV: Alabama, Florida, Georgia, Mississippi, South Carolina, Tennessee, Virginia—2026 Second Avenue North, Birmingham 3, Ala.

Region V: Kentucky, Michigan, Ohio—4237 Main Post Office, West Third and Prospect Avenue, Cleveland 13, Ohio.

Region VI: Illinois, Indiana, Minnesota, Wisconsin—1200 Merchandise Mart, Merchandise Mart Plaza, Chicago 54, Ill.

Region VII:³ Colorado, Iowa, Kansas, Missouri, Nebraska, North Dakota, South Dakota, Wyoming—911 Walnut Street, Kansas City 6, Mo.

Region VIII: Arkansas, Louisiana, New Mexico, Oklahoma, Texas—1114 Commerce Street, Dallas 2, Tex.

Region IX:⁴ Arizona, California, Idaho, Montana, Nevada, Oregon, Utah, Washington—150 Federal Office Building, Fulton and Leavenworth Streets, San Francisco 2, Calif.

North Carolina: Not included in any region. Information may be obtained through North Carolina Department of Labor, State Department Building, Salisbury and Edenton Streets, Raleigh, N. C.

Hawaii: Territorial Representative—Federal Building, King and Richards Streets, Honolulu, T. H.

¹ New Hampshire is serviced by an itinerant station located in Manchester. Vermont is serviced by an itinerant station located in Rutland.

² Delaware is serviced by an itinerant station located in Wilmington.

³ North Dakota is serviced by an itinerant station located in Fargo. South Dakota is serviced by an itinerant station located in Sioux Falls.

⁴ Arizona is serviced by an itinerant station located in Phoenix. Nevada is serviced by an itinerant station located in Reno. Idaho is serviced by an itinerant station located in Boise. Montana is serviced by an itinerant station located in Butte. Utah is serviced by an itinerant station located in Salt Lake City.

Alaska: Territorial Representative—201-202 Federal Building, Post Office Box 1030, Juneau, Alaska.

Puerto Rico and Virgin Islands: Territorial Director—Post Office Box 3906, Santurce 29, P. R.

District of Columbia: Room 5415, Department of Labor Building, Fourteenth and Constitution Avenue, Washington 25, D. C.

§ 601.656 Minimum wage determinations. The latest compilation of minimum wage determinations of the Secretary of Labor under the Walsh-Healey Public Contracts Act as set forth in 15 F. R. 4624, et seq., dated July 20, 1950.

SUPPART G—FAIR LABOR STANDARDS ACT OF 1938

§ 601.701 Basic statute. Section 6 (a) of the act requires every employer to pay to each of his employees "who is engaged in commerce or in the production of goods for commerce" not less than 75 cents per hour. Section 7 (a) of the act prohibits every employer from employing any of his employees "who is engaged in commerce or in the production of goods for commerce" for a work-week longer than 40 hours, unless such employee receives compensation for his employment in excess of such 40-hour workweek at a rate not less than one and one-half times the regular rate at which he is employed. The act is applicable within the United States, its territories and possessions. The United States Supreme Court also has ruled that the act is applicable to the Bermuda defense area leased to this country in 1940. The provisions of sections 6 and 7 of the act, however, do not apply with respect to certain categories of employees enumerated in the act, nor under certain circumstances also enumerated in the act.

§ 601.750 Regulations of the Administrator. The act provides that the Administrator shall by regulation define certain terms used in the act and may grant certain exemptions from its provisions. Regulations issued by the Administrator, as revised from time to time, should be consulted in these respects.

§ 601.751 Reimbursement of cost-plus-a-fixed-fee contractors for payments in accordance with the act. (a) Any employer who violates the provisions of sections 6 or 7 of the act is liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, and may be liable in an additional equal amount as liquidated damages; and in the event the employee institutes suit therefor, the costs of the action and a reasonable attorney's fee as allowed by the court. Violations also may be restrained by injunction and may subject the employer to criminal penalties. In this connection, however, attention is invited to the Portal-to-Portal Act of 1947 (act of May 14, 1947; 29 U. S. C. 251) which limits the liability of an employer under certain circumstances.

(b) Determinations of the liability of the Government to reimburse contractors for any amounts paid in settlement of claims under the act will be made by the Head of the Procuring Activity after appropriate coordination with The Judge Advocate General. Attention is invited to the Comptroller General's decision of December 15, 1943 (B-38642, 23 Comp. Gen. 439) to the effect that amounts paid in settlement of such claims may be reimbursed even though the settlements necessitated a compromise of disputed questions of law or fact, provided that such settlements are in amounts less than the total amounts (including liquidated damages, court costs, and attorneys' fees) which would be required to be paid in the event the employee sued and obtained judgment and that it is administratively determined that the settlement in each instance was fully warranted as being in the best interest of the Government. Vouchers covering such payments should be supported by evidence setting forth the basis for such administrative determination and any questions of law with respect to the application of the act should be determined only after thorough consideration has been given the matter by competent Government attorneys and a showing to that effect should also be made a part of the evidence submitted with the vouchers.

§ 601.752 Investigations and inspections. (a) The act provides that each employer subject to the act must make and preserve certain records of the persons employed by him and of the wages, hours and other conditions and practices of employment maintained by him. The act also provides that the Administrator, or his designated representatives, may investigate and gather data regarding the wages, hours and other conditions and practices of employment in any industry subject to the act and may enter and inspect such places and such records, question such employees and investigate such facts, conditions, practices or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of the act, or which may aid in the enforcement of the act.

(b) With respect to cost-plus-a-fixed-fee contractors, to the extent consistent with security and other regulations governing admission of visitors to plants and projects, representatives of the Administrator should be accorded access to the facilities and records of Army contractors for the purpose of making investigations to determine applicability of and compliance with the act. Investigations will be conducted at such time and in such manner as to interrupt or interfere least with operations. They should be confined whenever possible to the inspection of records in the office of the contractor. Inspections of the areas in the facility where construction or production is in progress will be held to a minimum. Necessary interviewing of employees should, whenever possible, be conducted outside work hours or at such other times as will interfere least with construction or production operations. The Administrator has stated that his investigators will advise cost-plus-a-fixed-fee contractors approximately one week before they plan to arrive at the project to make an investigation under the act.

(c) If the Administrator is of the opinion that any such investigation dis-

closes violation of section 6 or 7 of the act he will transmit a report of the investigation to The Judge Advocate General who will transmit it to the appropriate Procuring Activity. The Head of the Procuring Activity will cause the matter to be examined and, if such examination confirms such violation, will advise the contractor to take appropriate steps to comply with the law. The Head of the Procuring Activity promptly will report to The Judge Advocate General as to his examination of the matter and as to the action taken. If the question as to whether a violation exists depends upon a construction of the provision of the act which has not been construed by the courts or by the Attorney General, The Judge Advocate General will be consulted as to the construction to be followed:

(d) Cost-plus-a-fixed-fee contractors and subcontractors should be advised that immediately upon receipt of process in any legal action filed against them they must furnish a copy of all papers to the Contracting Officer. The Contracting Officer will make immediate report of the legal action direct to The Judge Advocate General, Washington 25, D. C.

SUBPART H—NONDISCRIMINATION IN EMPLOYMENT

§ 601.801 *Basic requirement.* The requirement is applicable in the United States, its territories and possessions, except as indicated in § 601.850 (j).

§ 601.850 *Interpretations of Executive Order 9346 by the Committee on Fair Employment Practice.* Pursuant to the authority vested in it by Executive Order 9346, the Committee on Fair Employment Practice has issued the following interpretations under the Order (29 CFR, 1202.1):

(a) The words "all contracts hereafter negotiated or renegotiated" include all contracts made, amended or modified.

(b) A nondiscrimination provision is required in leases, grants or easements, rights of way, etc., to the same extent that it is required in other contracts.

(c) The obligation to include the nondiscrimination clause exists even though the contract involves non-war (or non-defense) activity.

(d) The obligation to include the nondiscrimination clause exists even though the contract is required to be awarded to the lowest bidder.

(e) The obligation to include the nondiscrimination clause exists even though the contract is between a Federal Government agency and a State agency or subdivision of a State.

(f) The obligation to include the nondiscrimination clause does not depend on the amount of money or other consideration involved in the performance of the contract.

(g) The nondiscrimination provision required does not refer to, extend to or cover the activities or business of the contractor which are not related to or involved in the performance of the contract entered into.

(h) Inclusion of a nondiscrimination provision is not required in contracts the performance of which does not involve the employment of persons.

(i) Inclusion of a nondiscrimination provision is not required in contracts with foreign contractors for work to be performed outside the continental or territorial limits of the United States where no recruitment of workers within the said limits of the United States is involved.

(j) The nondiscrimination clause is not required in contracts renewed pursuant to an option to renew, in accordance with the terms, conditions and provisions contained in the original contract.

(k) The requirement that parties to contracts with the Government of the United States (or agencies of said Government) include a nondiscrimination clause "in all subcontracts" is not applicable to lessors of space in buildings except in cases where the Government of the United States (or any agency thereof) is the only tenant involved, or unless a subcontract is entered into solely for the purpose of performing an obligation (or obligations) imposed by the Government lease.

(l) The requirement that parties to contracts with the Government of the United States (or agencies of said Government) include a nondiscrimination clause "in all subcontracts" is applicable only in those cases in which the subcontract is entered into solely for the purpose of enabling the prime contractor to fulfill an obligation (or obligations) imposed by the Government contract.

SUBPART I—EMPLOYMENT RESTRICTIONS FOR SECURITY PURPOSES

§ 601.950 *Administration.* Administrative implementation of the policy governing the security clearance of private contractor employees and industrial facilities is set forth in detail in SR 380-405-1 (special regulations governing security clearance of private contractor employees and industrial facilities).

PART 602—GOVERNMENT PROPERTY

Sec.

602.000 Scope of part.
602.001 Policy.

SUBPART A—GENERAL

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AUTHORITY: §§ 602.000 to 602.701 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 602.000 *Scope of part.* This part applies to property provided by the Army Establishment for use by contractors in connection with military procurement.

§ 602.001 *Policy.* It is the policy of the Department of the Army that contractors will be required to furnish materials, special tooling, and industrial facilities, except that the Government may furnish such materials and industrial facilities when it is considered essential to meet necessary production or program schedules, or when otherwise considered to be in the best interest of the Government. When determined to be necessary or in the interest of national defense, the furnishing of materials, special tooling, and industrial facilities may be in the form of (a) Government property for incorporation in an end item, (b) for installation in the contractor's plant to aid in the production of supplies or services, (c) sales, gifts, and loans by the Army Establishment of property related to national defense, (d) sales of property by contractors, and (e) sale and/or exchange of property for like items. Paragraphs (a) and (b) of this section will be furnished with appropriate reduction in contract price; paragraphs (c) and (d) of this section are authorized by appropriate statutes and utilized only when applicable; paragraph (e) of this section is authorized by P. L. 152, 81st Congress, and is utilized when in the best interests of the Government for replacement of items obsolete or in an unusable condition. As a general policy, available special tooling shall be furnished contractors only when such furnishing does not interfere with essential production or program schedules. This section will be subdivided in accordance with Part 412 of this title, and will be implemented from time to time for the inclusion of those provisions not included in this basic regulation. Until such time as Part 412 of this title, is published, existing regulations and implementing instructions contained in this Procedure will govern.

SUBPART A—GENERAL

§ 602.101 *Definitions.* As used in this part, the term in § 602.101-1 has the meaning stated therein.

§ 602.101-1 *Contractor inventory.*

The term "contractor inventory" means (a) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (b) any property which the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to com-

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pletion of the work, for the convenience or at the option of the Government.

NOTE: The balance of this subpart will be published subsequent to the issuance of Part 412 of this title.

SUBPART B—MATERIAL

NOTE: To be issued subsequent to the publication of Part 412 of this title.

SUBPART C—SPECIAL TOOLING

NOTE: To be issued subsequent to the publication of Part 412 of this title.

SUBPART D—INDUSTRIAL FACILITIES

§ 602.400 Scope of subpart. This subpart sets forth policies governing industrial facilities provided by the Government for use by contractor in the performance of contracts for supplies or services.

§ 602.450 Contractor operated motor vehicles. Certain Government installations are being operated by private contractors who are given full operating control of the plant facilities, including vehicles, by the terms of their contracts with the Government. Vehicles which are thus operated by private contractors, but are owned by the Government, are classed as "Contractor Vehicles," in order to distinguish them from "Military Vehicles." The operation, maintenance, supply, and control of contractor vehicles are, by provisions of contract, in the hands of the private contractor, and fall within the category of Government-furnished property. The term "Contractor Vehicle" as used herein is defined as any vehicles, supplied under written contract to contractors, for use at Class II contractor-operated installations and other Government-owned Army Establishment controlled industrial facilities, and/or contractor-owned facilities under contract with the Army Establishment.

(a) It is the basic policy of the Department of the Army that contractors will, to the greatest practicable extent, procure their vehicles, fuels, lubricants, tires, and repair items in the open market. However, when necessary, Army Establishment items may be reclassified and supplied as Government-furnished property. Prior to the negotiation of contracts or amendments thereto, Contracting Officers will ascertain through their command channels probable availability of the necessary vehicles within the Army Establishment. Request for the furnishing of any of the items listed in this section will be made by the Contracting Officer, through channels to the appropriate supply source. Nothing in this section shall preclude a contractor from being reimbursed for such items which he may procure when properly allocable to the contract.

(b) When a standby industrial installation is reactivated and operated by a contractor under a contract, the terms of which require and authorize the furnishing of vehicles by the Government, the Army Commander shall transfer such vehicles as are on hand at the installation and which have been determined by the technical service concerned as suitable for the functions to be performed by the contractor. Vehicles transferred will be reclassified as Contractor Vehicles and transferred to the

contract account as Government-furnished property. Vehicles which are not authorized under the terms of the contract or are not suitable for use thereunder will be declared excess to the needs of the installation and returned to appropriate supply channels.

(c) When an industrial installation is placed in a stand-by status the owning technical service shall prepare and furnish the Army Commander a list of the vehicles at the installation which are necessary to its operational activities and which should not be removed or replaced unless authorized by the technical service concerned. The disposition of all other vehicles which have not been included in the above list will be made in the following order, (1) as requested by the Army Commander concerned, for use in the maintenance of the installation, (2) as required by the owning technical service for use in the performance of other contracts, (3) turned into appropriate supply channels. Vehicles which have been determined by the Army Commander as suitable for the purpose of maintaining the installation in a stand-by status will be reclassified as Military Vehicles and transferred to the appropriate account. Vehicles which the owning technical service requires for use in the performance of other contracts will be transferred to such contract accounts if authorized by the terms thereof. All remaining vehicles will be turned into appropriate supply channels.

(d) Contractor vehicles will not be included in the bulk allowances of administrative vehicles. When applicable, requests for changes in these allowances caused by compliance with paragraphs (a) and (b) of this section will be made by Army Commanders in accordance with SR 700-105-2 (Special Regulations pertaining to supply and reporting of vehicles for administrative use).

(e) When Military Vehicles are transferred to Contractor Vehicle classification, their Army Establishment registrations will be suspended, for possible reinstatement in case of reversion to military control. These vehicles, when properly classified as contractor vehicles, are not under the control of the Army Commander but are the responsibility of the technical service administering the contract. The supervision and accomplishment of all functions and obligations assumed by the contractor in connection with the operation, utilization of minimum essential vehicles, maintenance, storage, etc., as well as the protection of the Government's interest with respect to contractor vehicles rests with the Contracting Officer.

(f) Whenever license plates are required for Government-owned contractor-operated vehicles and existing laws prohibit the purchase of same by the contractor, arrangements may be made through channels to procure United States Government license plates. The request will be directed to the Chief of Transportation, Attention: Highway Transport Service. Information to be forwarded with the request will include the name of the technical service administering the contract, name and location of project and/or name and address of

the contractor, proper nomenclature of vehicle(s), and the U. S. A. registration number(s) if previously assigned and known.

(g) Statutory restrictions limiting the use of Government-owned vehicles to official business are equally applicable to contractor vehicles. Information governing the use of such vehicles under Army Establishment control is contained in Army Regulation pertaining to motor vehicles. Contractor vehicles including buses will not be used to transport employees or any other personnel between their places of residence and employment. In the absence of adequate public transportation facilities, service can be augmented or inaugurated under AR 55-90 (Army Regulation pertaining to bus transportation to and from employment), provided the other conditions therein set forth are satisfied.

NOTE: The balance of this subpart will be published subsequent to the issuance of Part 412 of this title.

SUBPART E—CONTRACT CLAUSES

NOTE: To be issued subsequent to the issuance of Part 412 of this title.

SUBPART F—SALE OF PROPERTY

§ 602.600 Scope of subpart. This subpart sets forth policies governing the sale of Government property to contractors.

§ 602.601 Sales of materials and special items. The Heads of Procuring Activities are authorized, when it is determined by them that such action is necessary in the interest of the national defense, to make contracts by negotiation for the sale of, and to sell to contractors, manufacturers, and suppliers of Army Establishment contractors, and to employees of the Government engaged in military production or construction, any uniforms, safety clothing and equipment, plant protective clothing, and other special articles necessary to persons employed in or otherwise connected with national defense industry or establishments. The furnishing and sale of safety clothing and equipment, etc., was approved by the Comptroller General, Decision B-23306, January 30, 1942.

§ 602.602 Exchange or sale of personal property and application of proceeds to purchase of similar items. Sections 602.602 through 602.602-3 prescribe rules under which the Army Establishment may exchange or sell similar items and apply the exchange allowance or proceeds of sale in whole or in part payment for the property acquired. The transaction shall be evidenced in writing.

§ 602.602-1 Scope. Exchange of personal property by the Army Establishment and the application of the exchange allowance or proceeds of sale of personal property in the acquisition of personal property by the Army Establishment under section 201 (c), Public Law 152, 81st Congress, shall be made only in accordance with the provisions of this section.

§ 602.602-2 General authorization. Subject to the provisions of §§ 602.602

through 602.602-3, heads of technical services are hereby authorized, in acquiring personal property within the United States or elsewhere, to exchange or sell similar items and apply the exchange allowance or the proceeds of sale in such cases, in whole or in part payment for the property acquired.

§ 602.602-3 Restrictions and limitations. (a) Sections 602.602 through 602.602-3 authorize the application of exchange allowances or proceeds of sale in whole or part payment for personal property acquired only when:

(1) The items sold or exchanged are similar to the items acquired (see paragraph (b) of this section for clarification of the word similar);

(2) The items acquired are to be used (whether or not intended for additional uses) in the performance of all or substantially all of the tasks or operations in which the items exchanged or sold would otherwise be used, but the items acquired need not be the same in number nor used in the same location as the items sold or exchanged: *Provided*, That the limitation prescribed in this section shall not apply with respect to parts or containers: *And provided further*, That detailed cross-identification between old and new items will not be required in the absence of specific requirements of law, but in the absence of such cross-identification, there shall be furnished to the General Accounting Office sufficient accounting data to establish that the items acquired were similar to the items exchanged or sold, that any exchange allowances or proceeds of sale applied in whole or part payment of property acquired were in fact available for such application, and that the transaction was otherwise in accordance with the provisions of this part; and

(3) There has been at the time of transfer or sale an administrative determination to apply the exchange allowance or proceeds of sale in acquiring property in accordance with §§ 602.602 through 602.602-3, which determination shall support each schedule of collections covering such proceeds of sale.

(b) Items shall be deemed "similar" for the purpose of §§ 602.602 through 602.602-3 when:

(1) They are substantially alike in all material aspects and characteristics, excluding, however, condition, year, model, size or capacity, and manufacturer; or

(2) The chiefs of the technical services, or their representative duly authorized for the purpose, finds in writing that they resemble each other in most material aspects and characteristics and are adaptable to the same or comparable uses, which finding shall support each purchase document covering property acquired pursuant thereto; or

(3) They constitute parts of or for assembled items, or containers for items, which items are similar within the meaning of subparagraph (1) or (2) of this paragraph.

(c) Sections 602.602 through 602.602-3 shall not be construed to authorize:

(1) The acquisition of personal property by a technical service when such

acquisition is not otherwise authorized by law;

(2) The acquisition of personal property by a technical service in contravention of (i) any restriction upon the procurement of a commodity or commodities, or (ii) any replacement policy or standard, prescribed by the President or by the Administrator of General Services Administration pursuant to the act.

(3) The purchase or acquisition of personal property otherwise than under a consolidated purchasing or stores program or Federal Supply Schedule contract where procurement under such program or contract is required by regulations or other directives prescribed by the Administrator: *Provided*, That a technical service acquiring an item or items under and in accordance with such program or contract may sell or exchange similar items and apply the exchange allowance or proceeds of sale as provided in §§ 602.602 through 602.602-3; or

(4) The sale, transfer, or exchange of excess or surplus property in connection with the purchase or acquisition of personal property: *Provided*, That a Department obtaining items of excess or surplus property as authorized by law may thereafter exchange or sell such items and apply the exchange allowance or proceeds of sales in accordance with §§ 602.602 through 602.602-3.

§ 602.603 Exchanges and transfers between Executive Agencies. In acquiring personal property Executive Agencies may exchange similar items with, and transfer similar items to, other departments upon such terms as may be agreed upon by the agencies concerned, transfer funds in accordance with such terms, and apply the exchange allowance or proceeds of transfer in whole or part payment for personal property acquired. Funds transferred as representing the difference in value between items so exchanged shall be covered into miscellaneous receipts by the transferee agency unless (a) other disposition is authorized by law, or (b) acquisition of items in addition to the items received in exchange is required for the performance of the tasks or operations in which the similar items exchanged would otherwise have been used.

SUBPART G—RESEARCH AND DEVELOPMENT

§ 602.700 Scope of subpart. This subpart sets forth policies and special procedures governing material, special tooling, and equipment provided by the Government for the use in research and development contracts or projects.

§ 602.701 Loan of equipment. Government property acquired for research and development may be loaned to private industrial firms and educational institutions for use in privately financed research and development programs, if such programs are of interest to the Government, and the results of the research will be furnished the Government without cost to the Government. Any such loan should be reflected in a written agreement setting forth the terms of the loan, and the benefits to be derived by the Government.

PART 603—INSPECTION AND ACCEPTANCE

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- 603.400 Scope.
- 603.401 General responsibilities.
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AUTHORITY: §§ 603.000 to 603.403 issued under R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Sup., 151-161.

DERIVATION: Army Procurement Procedure, March 15, 1951.

§ 603.000 Scope of part. Supplementary to, but consistent with Part 413 of this title, this part deals with requirements for the inspection and acceptance of supplies and services procured by the technical services and all other authorized Procuring Activities of the Army Establishment.

§ 603.002 General policy. All supplies and services procured by the Army Establishment (including those manufactured in the plants owned and operated by it) shall be inspected and accepted in accordance with the procedures set forth in this part, with the exception of those instances where it has been determined to be in the best interest of the Government to utilize the inspection services of another Government Agency (see § 603.005). In arranging for inspection, consideration will be given to the utilization of the inspection services of other Government Agencies to assure that inspection operations are carried out in the most economical fashion consistent with the best interest of the Government. Supplies and services shall be inspected by or under the supervision of an inspector representing the Government unless otherwise expressly provided in the contract.

§ 603.003 Inspection requirements. Inspection shall be conducted in accordance with (a) provision of the contract; (b) Subchapter A, Chapter IV of this title; (c) this Procedure; and (d) instructions issued by the Procuring Activity. A manufacturer's certificate

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or other statement of quality or quantity may be considered, at the discretion of the Procuring Activity, a proper element in determining whether supplies and services are in conformance with the contract, but such certificate or other statement shall not be considered as eliminating the necessity for inspection. When a public exigency will not permit all required inspection, the Procuring Activity may reduce inspection to a level consistent with the circumstances. When the contract provides for inspection at source and it has been determined to be in the best interest of the Government to ship prior to inspection, such shipment may be made if the contractor agrees to bear the costs which may be incurred as a result of a rejection upon completion of the required inspection.

§ 603.004 Points of inspection. Inspection on behalf of the Government shall be conducted in all cases prior to acceptance, except as otherwise permitted by Part 413 of this title, as implemented by this part. To the extent practicable, inspection of supplies shall be made at such times and places (including the stage and period of manufacture and including subcontractors' plant) as are necessary to determine that the supplies will conform to the contract.

(a) Purchases will normally be inspected at origin when the situation meets one or more of the following descriptions:

- (1) Items in continuous volume production at a given plant.
- (2) Where plants are so grouped geographically as to make visits by inspectors practicable and economical.

(3) Where quality control and inspection are inseparably related to the production methods at a particular plant;

(4) Where it is necessary to determine compliance with contract requirements as items are produced, or as soon thereafter as possible, to eliminate considerable expense to the contractor or to the Government resulting from delay in correcting the item and from manufacture and shipment of unacceptable products.

(5) Products where hidden defects could be located only during process of manufacture.

(6) Where special instruments, gages, or facilities for inspection are available only at the manufacturer's plant.

(7) Where it would be necessary to replace costly special packaging and packing which would be destroyed by destination inspection.

(8) Such other purchases as may be determined by the Procuring Activity to be in the best interest of the Government.

(b) Purchases will normally be inspected at destination, provided the interest of the Government is adequately protected thereby when the situation meets one or more of the following descriptions:

(1) Off-the-shelf purchases from distributors rather than manufacturers.

(2) Small onetime purchases that do not require special equipment for inspection.

(3) Plants where the volume of procurement is not sufficient to justify a full time inspector and the increase in cost caused by inspection at origin would be unwarranted.

(4) Where necessary specialized testing equipment is located only at destination.

(5) Biologicals processed under direct control of National Institute of Health or the Federal Food and Drug Administration.

(6) Perishable subsistence.

(7) Such other purchases as may be determined by the Procuring Activity to be in the best interest of the Government.

(c) Perishable subsistence destined for oversea shipment will be inspected for condition and quantity at ports of embarkation. The Transportation Corps will call on the Quartermaster Corps to make such arrangements as may be necessary to provide the technical inspection required.

(d) Brand name items purchased for authorized resale normally will be inspected and accepted at destination. Inspection of such supplies at ports of embarkation will be accomplished by Contracting Officers on the basis of a tally-sheet signed by the Port Transportation Officer evidencing receipt of shipment.

§ 603.005 Responsibility for inspection. Inspection is the responsibility of the Procuring Activity concerned. In instances where it is desirable to have inspection performed at destination, arrangements will normally be made to have the activity requiring the supplies perform the necessary inspection. Ports of embarkation will not be required to perform procurement inspections of a technical nature for other activities on supplies received in transit for oversea shipment. Inspection at installations or bases normally will be limited to quantity checks and checks of quality not requiring technical training or special equipment. The activity responsible for inspection may utilize the inspection services of other Government activities provided satisfactory agreement may be reached with the other activity concerned. Such agreements will be in accordance with the following policies and procedures:

(a) When made with other military department activities they will normally be on a reimbursement-in-kind basis.

(b) When made between Procuring Activities of the Army Establishment and Government activities outside the military departments they will be on a reimbursement basis acceptable to the activities concerned.

(c) They will include agreements on the following procedural matters:

- (1) Inspection practices.
- (2) Reporting of shipments.
- (3) Accomplishment of paper work.
- (4) Processing of shipping documents.
- (5) A definite understanding concerning which agency is to furnish the inspection gages, measuring instruments, and laboratory facilities; the location of such facilities as well as the expected delivery date of inspection

gages and measuring instruments, if such devices are required.

§ 603.006 Acceptance. Acceptance is the act of an authorized agent of the Government by which the Government acknowledges and agrees that the supplies or services are in conformance with the contract as to quality and quantity. Inspection prior to acceptance shall be for the convenience of the Government and should not be construed as indicating acceptance. Acceptance is the responsibility of the Procuring Activity. Where desirable, for reasons of urgency or economy, supplies which fail to meet all contract requirements may be accepted under special circumstances, subject to equitable adjustment of the contract price or such other adjustments as may be provided for by the contract. If, as a result of inspection, supplies are not accepted, they will be returned to the contractor or held for his disposition at no cost to the Government.

§ 603.007 Joint procedures. All inspection of supplies and services by Army Procuring Activities will be consistent with approved standards promulgated by the Department of Defense.

§ 603.008 Contract provisions. The contract clauses required for use in this part are set forth in parts 406 and 596 of this title.

SUBPART A—INSPECTION ORGANIZATION

§ 603.100 Scope. This subpart sets forth the general policy of the Department of the Army as to organization within the technical services regarding procurement inspection activities.

§ 603.101 Responsibilities for inspection staffs in the technical services. (a) The Headquarters Inspection organization of each technical service will be staffed to perform the following:

(1) Maintain continuous and close liaison with Standards Branch, Procurement Division, G-4, Department of the Army.

(2) Formulate and supervise technical service inspection policies and procedures adhering to Department of Defense and Department of the Army policies to effect:

(i) Elimination of duplication of inspection.

(ii) Adequate quality assurance of all defense procurement.

(iii) Uniformity of standards of quality assurance and quality control.

(iv) Simplification of relations with industry.

(v) Facilitation of rapid expansion in emergency.

(vi) Training of inspection personnel.

(3) Serve as contact point with inspection organizations of other technical services of the Army Establishment, Navy and Air Force.

(b) The inspection organization of each technical service, either locally or centrally will be staffed to accomplish the following:

(1) Inspect the supplies and services procured by the technical service.

(2) Establish inspection point.

(3) Select and train personnel to whom the task of determining accept-

ability of supplies and services procured will be assigned.

(4) Properly assign inspection personnel to specific tasks in accordance with qualifications.

(5) Maintain historical records of the assignment of each inspector.

(6) Maintain continuous liaison with procurement authorities for determining inspection requirements in future procurement.

(7) Determine inspection requirement for mobilization planning.

(8) Determine adequacy of contractor's inspection methods and procedures for maintaining acceptable quality.

(9) Cooperation with Research and Development and Engineering organizations in determining sampling inspection and test requirements in specifications.

(10) Preparation of written standard inspection procedures for all standard items of procurement.

(11) Recommendation of approval or disapproval of requests for deviation from specification requirements.

(12) Visit bidder's plant, upon request of the Contracting Officer, to make pre-award surveys of their capacity to produce supplies and services in accordance with requirements of Invitation for Bids.

(13) Disseminate information regarding rights and obligations of the Government and the contractors, respectively, with regard to performance of the inspection mission.

(14) Determine and present all facts pertinent to the inspection mission relative to claims for refund or remission of liquidated damages or in connection with the Disputes or Default Clauses of the contract when requested by the Contracting Officer.

(15) Recommend new contract clauses and revisions of old contract clauses insofar as may be deemed necessary in the light of experience in the field of Government inspection.

(16) Initially report frauds, suspected frauds, and other suspected criminal conduct in connection with Government contracts to the Contracting Officer.

(17) Report noncompliance with Government contracts such as improper employment or inadequate compensation of labor, improper labor, improper maintenance of records, etc. to the Contracting Officer.

SUBPART B—INSPECTION PERSONNEL

§ 603.200 Scope. This subpart establishes the over-all Army policy for the procurement, training, and assignment of inspection personnel.

§ 603.201 Procurement. Vacancies in inspection organizations will be filled whenever possible by procurement of surplus inspectors from other technical services.

§ 603.202 Training. Each technical service will prepare and publish an organized program for the training of inspectors. This program shall be applicable to both peacetime and emergency situations.

(a) *Types of inspectors to be trained.* The training program shall include the

material needed for training line inspectors, technical inspectors, and administrative and supervisory inspectors.

(b) *Types of training.* Normally maximum use should be made of "on-the-job" training procedures in order that:

(1) Rapid expansion will be possible in the event of an emergency.

(2) No transitional period will be required from classroom to the actual job.

§ 603.203 Assignment and administration of inspectors. (a) Certain principles that apply particularly to the assignment and administration of inspectors are set forth in the belief that careful observance will result in more effective utilization of trained manpower and a greater concentration of the inspection effort along productive lines.

(b) Assignment of the inspection personnel to any given job will be most effectively carried out if those responsible for planning are able to specify the number and types of inspectors needed, and furnish details about the work that will permit analysis of each position from the standpoint of qualifications necessary for fulfillment.

(c) To assist in the proper placement of qualified personnel, and to provide records of current assignments, each inspection office of the technical service having assignment jurisdiction over inspectors will keep a historical record of the assignments of each inspector. In addition to recording previous experience and training, this record will contain such information as present assignment, estimate of when next available, status regarding clearance to handle classified information, and any other data that will be helpful in determining proper placement of personnel.

(d) Assignment should be based on both geographical and technical qualifications. By placing authority and responsibility near points of action, closer administrative supervision will be exercised, savings in inspection man-hours, per diem and travel expense through reduced travel will be effected, and inspector morale will be improved through the more satisfactory working conditions thus established.

(e) When, by reason of lessening of work at one inspection level point, a surplus of inspection personnel occurs and the inspection authority having jurisdiction indicates that the surplus cannot be effectively utilized, information of the available personnel will be given by the personnel office of the Procuring Activity involved to the personnel officers of the other Procuring Activities in the same vicinity for possible utilization. Similarly, when additional personnel are needed, the personnel officers of the Procuring Activities involved will make inquiry of other such personnel officers to ascertain if trained inspection personnel are available before additional personnel are employed and trained. This liaison between personnel offices, to determine the current availability of personnel, is essential to the effective utilization of inspection manpower in the various Activities, and shall be established as a continuing method of operation.

SUBPART C—INSPECTION OPERATIONS

§ 603.300 Scope. This subpart establishes those phases of the inspection of procured supplies and services wherein uniformity in the operation of the various technical services is essential if maximum efficiency and economy of the over-all Army Establishment inspection function is to be achieved. It implements Subchapter A, Chapter IV of this title generally rather than a specific part or section thereof.

§ 603.301 Documents essential for inspection. (a) The inspection organization of each technical service shall prepare and supply the inspectors such manuals, handbooks, and such Standard Inspection Procedures as are needed for the efficient performance of the job to manuals, handbooks, and such other Standard Inspection Procedures shall be considered tentative until reviewed and approved by the Assistant Chief of Staff, G-4, Department of the Army (Chief, Standards Branch).

(b) Each inspector in charge of inspection operations in a plant shall be supplied with the following:

(1) Extract of the contract, letters of intent, memorandum of awards, change orders, etc., that include all the data necessary for the performance of inspection.

(2) Copies of the applicable specifications.

§ 603.302 Amount of inspection. (a) The amount of inspection will vary depending upon the importance of items and dimensions and the past quality history of the contractor from a very thorough inspection of each item or dimension to the inspection of relatively small samples drawn from the items offered for inspection and acceptance.

(b) Under certain conditions it is uneconomical to have inspection performed each time a shipment is made from a contractor's plant. When the monetary value and functional importance of the supplies shipped are relatively low and the contractor's past quality history is high, inspection may consist of inspections made, without prior announcement to the contractor, at such times as deemed necessary by the cognizant inspection agency. Shipments of such supplies made between inspection visits will be certified as acceptable by the inspection agency on the basis of vendors' invoices supported by a receipted bill of lading, a prepaid railway express slip or an insured Government parcel post receipt, and on the basis of the quality history of the contractor as judged by the past inspection visits.

(c) Sampling procedures, when utilized, will in general be of the following types:

(1) Samples drawn and tested in accordance with specification requirements.

(2) Sampling procedures in accordance with MIL-STD-105. The use of sampling inspection plans with their associated Acceptable Quality Levels and Classifications of Defects has an effect on the cost of producing and delivering

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supplies contracted for by the Government, therefore, all invitations for bids and subsequent contracts shall include or reference the applicable Acceptable Quality Levels and Classifications of Defects when they are to be used in the inspection of the supplies being procured.

(3) Sampling procedures that utilize analysis of the results of inspection on a variable basis. (Standardization of this method is in process currently in Munitions Board Material Inspection Agency. Until such time as a Military Standard is published covering this method, locally developed plans should be utilized when applicable and in the best interest of the Government.)

§ 603.303 Place of inspection. (a) Wherever feasible, Government inspection of the end product will be employed, and in-process inspection by Government inspectors will be minimized without excessive loss of quality assurance.

(b) Normally Government inspection will be conducted at points of final assembly of prime contractor.

(c) The prime contractor is responsible for the quality of the raw materials, components, parts, and subassemblies incorporated in his finished product, except as to items of Government Furnished Property or where contrary contract provisions exist. However, in many cases it will be found to be in the interest of the Government to apply inspection to such raw materials as steel, copper, brass, etc., at the plant of the producer. Likewise, in some cases, it will be found essential or highly desirable to apply inspection at the plant of the manufacturer of parts and subassemblies under subcontract. The technical services will establish the detailed procedures for determining when and where such subcontractor inspection will take place. Whenever inspection is performed prior to final inspection for acceptance purposes, the stamps, tags, and other marking devices used to indicate such inspection shall be designed and/or their meaning so defined as to indicate without question that the inspection was entirely for the convenience of the Government and that such approval implied or otherwise is provisional in nature. This provisional approval requirement is essential in order that the Government will never be in the position of interfering with the prime-subcontractor relationship and further so that the Government will never be in such position that it is unable to reject supplies not in accordance with requirements of the contract at the time final inspection for acceptance purposes is made.

(d) When raw material, components, parts, or assemblies have been subjected to earlier Government inspection and approval, they are not to be Government inspected again upon being received at the plant of the contractor, unless specifically provided for, except when check inspection indicates evidence of possible damage or deterioration in transit. Such check inspection to determine proper identity, quantity, and condition will always be made upon receipt of shipments.

(e) The principle that will govern in-

spection at Government manufacturing installations is that those responsible for process inspection of production will not be responsible for approving Government acceptability of product.

§ 603.304 Deviations and modifications. Each Procuring Activity will clearly define the extent to which its subdivisions are authorized to approve deviations from contract requirements and will prescribe the procedures and channels for obtaining such approvals.

§ 603.305 Rejections. (a) Notification of rejections will be given to the contractor and will include the reasons for the rejection, and if deemed advisable, any suggestions that might help him in correcting the cause of rejection.

(b) Suitable methods for properly identifying rejected material will be established by the Procuring Activity and will be employed by inspectors in order to eliminate any possibility of the contractor's resubmitting rejected supplies on which the deficiencies have not been corrected. Such methods will also include provisions for tagging, marking, or isolating provisionally rejected supplies until accepted or finally rejected.

(c) Each procuring Activity will clearly define the extent to which its subdivisions are authorized to suspend work on contracts involving the use of Government Furnished Property when it appears that considerable spoilage will result. The technical service will prescribe in detail the channels for reporting such conditions. In each case, the contractor shall be notified in writing to suspend any work on the item which includes or follows the operation responsible for the defect until the dispute is resolved by higher authority.

§ 603.306 Marking and shipping. (a) Each service will prepare and disseminate to their inspection organizations detailed instructions covering proper handling of shipments at Government expense. Government bills-of-lading, parcel post shipments, shipment by Government owned transportation, emergency shipments, guarding of shipments containing classified supplies and services (see AR-380-5 (Parts 505 and 509 of this chapter)), shipment at contractor's expense, and all other necessary instructions.

(b) At the time supplies are finally accepted by the inspector, they will be adequately marked with the stamp of the inspecting technical service to show evidence of acceptance (see § 596.303 (c) of this chapter).

§ 603.307 Security. (a) The importance of strict observance of security regulations imposed for the safeguarding of vital information will be impressed upon inspection personnel at all levels.

(b) Whenever the development, production, or procurement of an article of supplies and services is classified, information regarding these projects will be considered to be information affecting the national defense within the meaning of the provisions of the Espionage Act. Contract, specifications, drawings, correspondence, and reports pertaining to a classified project, as well as many other

papers containing information requiring classification, bear the marking—Secret, Confidential, or Restricted. Provisions for handling, transmitting, and storing such papers are made in AR 380-5, of which copies or pertinent extracts are obtainable. (See also § 596.104-12.)

(c) Extreme care will be taken by all inspection personnel who are required to use such papers in the course of their work to prevent unauthorized individuals from obtaining access to them or the information contained therein. Inspectors are to be particularly careful not to discuss their work with nor give any information concerning it to anyone except authorized persons.

SUBPART D—INSPECTOR-CONTRACTOR RELATIONS

§ 603.400 Scope. This subpart establishes the general rules for the conduct of inspectors as regards their relations with contractors.

§ 603.401 General responsibilities. The inspector at a contractor's plant will be responsible for those Government inspection operations, records, and personnel under his jurisdiction within the plant. He will take all necessary steps to insure compliance with the principles and policies set forth in Parts 590-603 of this chapter and procedures prescribed in the inspection manuals and related publications of his technical service. After inspection begins in a contractor's plant, the inspector is to be considered as the contact point for the service on all inspection matters. He will be advised promptly of any contract interpretations or other official changes affecting the discharge of the inspection functions. These will be sent to the contractor through the inspector, or to the inspector at the time the contractor is notified. During the course of inspection in a contractor's plant, the inspector will pay particular attention to the following:

(a) The contractor's inspection methods will be observed continually to detect any laxity or other factors which might adversely affect the quality of supplies and services to be submitted to Government inspectors for acceptance.

(b) The inspector, having in mind the contractor's inspection procedures necessary for maintaining quality, may assist him, in a cooperative and advisory manner only, in making improvements in his inspection methods and procedures.

(c) The inspector will assure that a clear understanding exists with the contractor on all inspection matters in which they are mutually interested, and he will endeavor at all times to build up a spirit of cooperation.

(d) The inspector will promptly and discreetly report to his superiors all information on conditions in the plant of a contractor which are detrimental to the interest of the Government. Such reports should state the source(s) of the information and will cover the following subjects:

(1) Use of substandard quality of supplies.

(2) Any treatment or manipulation of supplies or equipment inconsistent with approved practice.

(3) Factors contributing to a falling off in production.

(4) Failures to meet delivery schedules.

(5) Interference with prompt and effective Government inspection.

(6) Actual or potential labor troubles detrimental to the Government's interest.

(7) Evidence of sabotage, espionage, subversive activities, or intent to defraud.

(8) Deliberate and repeated manufacture of substandard supplies, with a view toward supplying rejects to civilian customers.

(9) Bribes or attempted bribes.

(10) Offering of favors of any kind with intent to influence an inspector's decision.

(11) Threats of violence or action to remove an inspector with intent to intimidate an inspector or to influence an inspector's decisions.

§ 603.402 Compliance with contractor's rules and regulations. The inspector will observe the applicable rules and regulations pertaining to personal conduct, safety, and security established in the contractor's plant, and will not make inspection where proper safety precautions are not observed by the contractor.

§ 603.403 Standards of conduct. In all phases of the inspector's activities the following rules of conduct policy will be followed:

(a) The inspector will be tactful and courteous and will cooperate with the contractor within the limits of his duties and responsibilities.

(b) The inspector will be impartial in action and judgment and render prompt decisions on inspection problems.

(c) The inspector will avoid undue familiarity with officials and employees of the contractor.

(d) The inspector will not disclose to any unauthorized person any information whatsoever concerning the design, production, movement, quantity, condition, or disposition of supplies.

(e) The inspector will not discuss the contractor's affairs or plant operations, except as authorized by his organization.

(f) The inspector will not accept from the contractor contributions of any kind for the benefit of himself or any other person, firm, or organization. He will not accept gifts, loans, favors, meals, beverages, tickets of admission to theaters or sporting events, housing accommodations, facilities for week-end trips, transportation, etc.

(g) Where plants are located in such places and under such conditions that meals and housing accommodations are available only at contractor-owned or

contractor-sponsored facilities, inspectors may arrange for meals, and housing at such facilities upon payment of adequate reimbursement therefor.

(h) The inspector will not accept any other thing of value or service from persons or firms transacting business with the Army Establishment or from persons or firms with which the inspector might have been concerned in any way.

(i) An employee of the inspection organization will not suffer or permit any member of his immediate family to accept or do any of the things which are prohibited with respect to the employee himself, and which might bring discredit to the Army Establishment.

(j) Such other standards of conduct as given in § 590.455 of this chapter.

[¹ W. R. Doc. 51-5334; Filed, May 4, 1951; 8:54 a. m.]

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required
735500	Pumping equipment: Centrifugal pumps (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	RO
735600	Centrifugal pumps (delivering liquids separately or in combination with solids and/or gases) with all of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	R
735600	Rotary pumps (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	RO
735600	Rotary pumps (delivering liquids separately or in combination with solids and/or gases) with all of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	R
735700	Deep-well turbine pumps (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over as calculated by the manufacturer under the assumed condition that the bowl assembly is directly connected to the drive head assembly without intervening column pipe; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	RO
735700	Deep-well turbine pumps (delivering liquids separately or in combination with solids and/or gases) with all of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch as calculated by the manufacturer under the assumed condition that the bowl assembly is directly connected to the drive head assembly without intervening column pipe; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	R
735800	Reciprocating steam pumps (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None	RO

¹ This revision affects characteristic (a) only.

¹ This part of the amendment was published in Current Export Bulletin No. 617, dated April 27, 1951.

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce

Subchapter C—Office of International Trade

[5th Gen. Rev. of Export Regs., Amdt.
P. L. 46]

PART 399—POSITIVE LIST OF COMMODITIES AND RELATED MATTERS

MISCELLANEOUS AMENDMENTS

Section 399.1 *Appendix A—Positive List of Commodities* is amended in the following particulars:¹

1. The following revisions are made to clarify the wording of the commodity descriptions without making substantive changes:

RULES AND REGULATIONS

3. The following revisions are made in commodity descriptions. The revisions include changes in validated license control.

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required	Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required
735800	Pumping equipment—Continued. Reciprocating—steam (delivering liquids separately or in combination with solids and/or gases) with all of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None R		547400	Carbon or graphite products (natural and synthetic); Carbon brushes for motors, and for starting, lighting, tools (iron and steel chief value); Jacks, hand-operated, and parts, with lifting capacity of 10 tons or more (finishing hand-operated hydraulic jacks) (report jacks for construction use in 732100; jacks for garage use in 732180); and other industrial jacks in 735008. ²	Lb.....	ELME 2	50	RO
736100	Other reciprocating power pumps (delivering liquids separately or in combination with solids and/or gases), with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		617888	Brass and bronze blanks Brass and bronze circles Nickel manufactures, n. e. s. Construction equipment, and parts, n. e. s. Jacks for construction use, all types, and parts, with lifting capacity of 10 tons or more (report industrial jacks in 732100; garage jacks in 732180); and jacks, hand-operated in 617888. ³	Lb.....	ODGS	25	R
736100	Other reciprocating power pumps (delivering liquids separately or in combination with solids and/or gases) with all of the following characteristics: (a) designed delivery pressures at 220 degrees Fahrenheit and over; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit and over; (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None R		620915	Other brass steel tanks ⁴ .	Lb.....	STEE 38	100	R
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		647998	Spinnerettes for yarns of 150 denier and greater ⁵ .	Lb.4.....	NONE	300	RO
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None R		654998	Cannery machinery and parts: Complete processing equipment, installations or unit components thereof, operating at pressures over 200 psi, including specially designed items of processing equipment, e. g., autoclaves and digesters, ⁶	GIEQ	25	R	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		723100	Paper- and multi-mill machinery and parts; Complete processing equipment, installations or unit components thereof, operating at pressures over 200 psi, including specially designed items of processing equipment, e. g., autoclaves and digesters, ⁶	GIEQ	None	RO	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		734800	Mechanical vacuum pumps, and parts, all types except diffusion, which are designed to produce a vacuum of 2 million meters or less mercury pressure absolute. ⁷	GIEQ	None	RO	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 300 pounds per square inch and over; (b) designed to operate continuously at temperatures of 220 degrees Fahrenheit and over; (c) fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		761250	Vacuum pumps, and parts, all types, which are designed to produce a vacuum of 50 millimeters or less, mercury pressure absolute, but not as low as .2 millimeters (report whether pumps are fabricated or lined with any corrosion-resistant material as defined in the "General Notes to Appendix A.") ⁸	GIEQ	None	RO	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None R		770820	No.....	GIEQ	None	RO	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None R		770840	Molding machines for plastics, e. g., extrusion, injection, and other molding machines for plastics, and parts, ¹⁰	GIEQ	None	RO	
736100	Pumps, n.e.s. (delivering liquids separately or in combination with solids and/or gases) with any of the following characteristics: (a) designed delivery pressures at pump discharge of 75 to 300 pounds per square inch; (b) designed to operate continuously at temperatures under 220 degrees Fahrenheit; and (c) not fabricated of, or lined with, any corrosion-resistant materials as defined in the "General Notes to Appendix A." ¹	No.....	CONS	None RO		775008	Molding machines for plastics, e. g., extrusion, injection, and other molding machines for plastics, and parts, ¹⁰	GIEQ	None	RO	
736900	Parts for pumps included on the Positive List under Schedule B Nos. 73500 through 736910 for which validation license is required to R and O country destinations.	.......	CONS	None RO							
736900	Parts for pumps included on the Positive List under Schedule B Nos. 73500 through 736910 for which validation license is required to R country destinations.	.......	CONS	100 R							

¹This revision affects characteristic (a) only.

This part of the amendment shall become effective as of April 27, 1951.

2.Certain commodities are changed from R to RO commodities as follows:

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required
207090 707420	Natural and synthetic rubber manufactures, n. e. s.; Water-lubricated bearings; Electrical industrial annealing and heat-treating furnaces, and parts.	.....	RUBR ELME 1	250 100 RO RO	

This part of the amendment shall become effective as of 12:01 a. m., May 2, 1951.

¹This amendment revises the third entry under Schedule B No. 73100. The effect is to add to the Positive List parts for all of the construction jacks covered by this entry, to delete construction jacks with lifting capacity of less than 10 tons; and to increase the GLV dollar-value limit for the specified construction jacks from "None" to \$25.

²This amendment revises the present entry under Schedule B No. 754800 by: (1) separately listing spinerettes for yarns of 150 denier and greater; (2) changing the controls for these spinerettes from R to RO; and (3) deleting the Positive List spinnerettes for yarns under 150 denier.

³The above revised entry is substituted for the second and third entries under Schedule B No. 761250. The effect is to add to the Positive List, as RO commodities, high-pressure processing equipment over 200 up to, and including, 500 pounds per square inch, except autoclaves and digesters, which are included in the second entry presently on the Positive List; to add unit components; to delete autoclaves and digesters between 100 up to and including 200 pounds per square inch; and to reduce the GLV dollar-value limits for the commodities in the above revised entry from \$100 to "None."

⁴This above revised entry is substituted for the first and third entries under Schedule B No. 762500. The effect of this amendment is the same as noted in footnote 7 above.

⁵The effect of these amendments is to clarify the commodity descriptions without making substantive change. This effect is to change the control from R to RO; and to reduce the GLV dollar-value limit from \$100 to "None," by this entry; to change the control from R to RO; and to reduce the GLV dollar-value limit from \$100 to "None."

Dept. of Commerce Schedule B No.	Commodity	Unit	Processing code and related commodity group	GLV dollar value limits	Validated license required
775050	Chemical and pharmaceutical machinery and parts: Complete processing equipment installations or unit components thereof, operating at pressures over 200 psi, including special designed items of processing equipment installations, e.g., autoclaves and digesters. ¹¹		GIEQ 2	None	RO
775050	Complete processing equipment installations for concentrating mineral acids or unit components thereof, n. e. s., and including specially designed items of equipment for same. ¹²		GIEQ 2	None	RO
775050	Destructive distillation equipment and parts. ¹³		GIEQ 1	None	R
775050	Driers for chemical processes of the following types: continuous screen; cylinder; drum; rotary; spray; vacuum; and parts. ¹⁴		GIEQ	25	R
775050	Fractionating, rectifying and dephlegmation columns, and parts. ¹⁵		GIEQ 1	None	R
775050	Liquid solvent, extraction equipment, and parts, other than centrifugal counter-current solvent extractors, and parts. ¹⁶		GIEQ 1	None	R
775050	Pyrates roasters. ¹⁷		GIEQ 1	None	RO
775050	Sulfur burners. ¹⁸		GIEQ	None	RO
775050	Tanks, vats, kettles, piping and allied fixtures made of or lined with any corrosion-resistant material as defined in the "General Notes to Appendix A" (report steel storage tanks in 604300 if unlined; 620915 if lined). ¹⁹		GIEQ	None	RO
775050	Vacuum stills (report operating vacuum in millimeters mercury pressure absolute). ²⁰		GIEQ 1	None	R
775098	Industrial machinery and parts, n.e.s.: Complete processing equipment installations or unit components thereof, operating at pressures over 200 pounds per square inch including specially designed items of processing equipment installations, e. g., autoclaves and digesters. ²¹		GIEQ	None	RO
775098	Tanks, vats, kettles, piping and allied fixtures made of or lined with any corrosion-resistant material as defined in the "General Notes to Appendix A" (report steel storage tanks in 604300 if unlined; 620915 if lined). ²¹		GIEQ	None	RO
775098	Jacks, industrial, and parts, with lifting capacity of 10 tons or more (report jacks for construction use in 723100; jacks for garage use in 793180; and jacks, hand-operated in 617898). ²²		GIEQ	25	R
793180	Other automobile service appliances, and parts (report air compressors under 770400 and 770500 according to capacity): Jacks for garage use, and parts, with lifting capacity of 10 tons or more (report jacks for construction use in 723100; jacks for industrial use in 775098; and jacks, hand-operated, in 617898). ²³		GIEQ	25	R

¹¹ The above revised entry is substituted for the seventh and twenty-fourth entries under Schedule B No. 775050. The effect of this amendment is the same as noted in footnote 7 above.

¹² The above revised entry is substituted for the first entry under Schedule B No. 775050. The effect is to change from R to RO control unit components, n.e.s., of the equipment covered by this revised entry; and to reduce the GLV dollar-value limit from \$100 to "None."

¹³ The above revised entry is substituted for the sixteenth entry under Schedule B No. 775050. The effect is to remove the limitations as to pressure and metals; to delete from this entry distillation equipment other than "destructive"; and to reduce the GLV dollar-value limit from \$100 to "None."

¹⁴ This amendment establishes a separate entry for certain commodities included in the last entry under Schedule B No. 775050, other chemical and pharmaceutical machinery and parts, validated license required, R. The effect is to reduce the GLV dollar-value limit for the commodities in the above new listing from \$100 to \$25.

¹⁵ The above revised entry is substituted for the twenty-second entry under Schedule B No. 775050. The effect of this amendment is to remove the limitations of pressure on fractionating columns; and to reduce the GLV dollar-value limit for the commodities in the above revised entry from \$100 to "None."

¹⁶ The above revised entry is substituted for the thirty-second and thirty-third entries under Schedule B No. 775050. The effect of this amendment is to reduce the GLV dollar-value limit for solvent recovery machinery from \$100 to "None."

¹⁷ The two above revised entries are substituted for the thirty-fourth entry under Schedule B No. 775050. The effect of this amendment is to clarify the description; to change the controls for both of the revised entries from R to RO; and to reduce the GLV dollar-value limits from \$100 to "None."

¹⁸ The above revised entry is substituted for the second and fifth entries under Schedule B No. 775050. The effect of this amendment is to extend the coverage to include all tanks, vats, kettles, piping and allied fixtures made of or lined with any corrosion-resistant material; to change the controls for the commodities included in the above revised entry from R to RO; and to reduce the GLV dollar-value limits from \$100 to "None."

¹⁹ The above revised entry is substituted for the thirty-sixth entry under Schedule B No. 775050. The effect is to reduce the GLV dollar-value limit for vacuum stills from \$100 to "None."

²⁰ The above revised entry is substituted for the second entry under Schedule B No. 775098. The effect is to add to the Positive List as RO commodities complete processing equipment installations or unit components thereof, operating at pressures over 200 pounds per square inch, including specially designed items of processing equipment installations except autoclaves and digesters which are included in the second entry presently on the Positive List; to delete autoclaves and digesters between 100 up to and including 200 pounds per square inch; and to reduce the GLV dollar-value limit for the commodities in the present entry from \$100 to "None."

²¹ The above revised entry is substituted for the first entry under Schedule B No. 775098. The effect is to change the controls for the commodities included in the present entry from R to RO; to extend the coverage to include all tanks, vats, kettles, piping and allied fixtures made of or lined with any corrosion-resistant material; and to reduce the GLV dollar-value limit from \$100 to "None."

²² The above revised entry is substituted for the fifteenth entry under Schedule B No. 775098. The effect of this amendment is to add to the Positive List parts for jacks covered by this entry, and to increase the GLV dollar-value limit for such jacks from "None" to \$25.

²³ The above revised entry is substituted for the third entry under Schedule B No. 793180, "jacks for garage use." The effect of this amendment is to add parts for jacks covered by this entry, and to delete from the Positive List garage jacks with lifting capacity of less than 10 tons; and to increase the GLV dollar-value limit from "None" to \$25.

(In the foregoing notes, some entries are identified as, for example, "the second and third entries," "the sixteenth entry," etc., under a single Schedule B number. This identification is a reference to the sequence in which the entries appeared on the Positive List as published in the Comprehensive Export Schedule immediately prior to Apr. 27, 1951.)

This part of the amendment shall become effective as of 12:01 a. m., May 2, 1951.

Shipments of any commodities removed from general license to Country Group R or Country Group O destina-

tions, or whose GLV dollar-value limits were reduced, as a result of changes set forth in Parts 2 and 3 above which were on dock, on lighter, laden aboard an exporting carrier, or in transit to a port of exit pursuant to actual orders for

export prior to 12:01 a. m., May 2, 1951, may be exported under the previous general license provisions up to and including May 27, 1951. Any such shipment not laden aboard the exporting carrier on or before May 27, 1951, requires a validated license for export.

Section 399.2 Appendix B—Interpretations: Positive List of Commodities is amended by adding thereto the following new interpretation:²

Interpretation 3: Ball and roller bearings and parts

(1) A ball or roller bearing physically incorporated in a segment of a machine or in a complete machine prior to shipment loses its identity as a bearing and the machine or segment of machinery containing the bearing is the item subject to export license requirements.

(2) A ball or roller bearing not incorporated in a segment of a machine prior to shipment but shipped as a component of a complete unassembled (knocked-down) machine is considered a component of the machine, and the complete machine is the item subject to export license requirements.

(3) Ball and roller bearings shipped as spares or replacements are classified in Schedule B Nos. 769100-769315 (Ball and roller bearings and parts). This applies to separate shipments of ball and roller bearings and ball and roller bearings shipped with machinery or equipment for which they are intended to be used as spares or replacement parts.

(Sec. 3, 63 Stat. 7; 50 U. S. C. App. Sup. 2023. E. O. 9630, Sept. 27, 1945, 10 F. R. 12245, 3 CFR, 1945 Supp.; E. O. 9319, Jan. 3, 1948, 18 F. R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Deputy Director,
Office of International Trade.

[F. R. Doc. 51-5224; Filed, May 4, 1951;
8:50 a. m.]

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 655—NEEDLEWORK AND FABRICATED TEXTILE PRODUCTS INDUSTRY IN PUERTO RICO

MINIMUM WAGE ORDER

Pursuant to the Administrative Procedure Act (60 Stat. 237; 5 U. S. C., Sup., 1001) notice was published in the FEDERAL REGISTER on April 11, 1951, (16 F. R. 3191-3194) of the Administrator's decision to approve the minimum wage recommendations of Special Industry Committee No. 8 for Puerto Rico for the needlework and fabricated textile products industry in Puerto Rico, and the wage order which he proposed to issue to carry such recommendations into effect was published therewith. Interested parties were given an opportunity to submit exceptions.

Exceptions have been filed by several interested parties. The arguments and materials presented in the exceptions were considered at the time the Administrator made the decision to approve the recommendations of the industry

² This part of the amendment was published in Current Export Bulletin No. 616, dated April 19, 1951.

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committee. The exceptions raise no new matters requiring any change or modification of the previous decision.

It has been requested that approval of the recommended rates be withheld until action is taken by the Office of Price Stabilization with reference to the ceiling prices applicable to the products of this industry. The matter of such ceiling prices is presently under consideration by the Office of Price Stabilization. That agency will take such action in the matter as it considers appropriate.

Under the circumstances, the requests which have been received for a postponement of the effective date of this order or for a reopening of the hearing in this matter are hereby denied.

Accordingly, pursuant to authority under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended: 29 U. S. C. 201), the said decision is hereby affirmed and made final and the said wage order is hereby issued, to become effective June 4, 1951.

Sec.

- 655.1 Approval of recommendations of industry committee.
- 655.2 Wage rates.
- 655.3 Notices of order.
- 655.4 Definitions of the needlework and fabricated textile products industry in Puerto Rico and its divisions.

AUTHORITY: § 655.1 to 655.4 issued under sec. 8, 52 Stat. 1064; 29 U. S. C. 208.

§ 655.1 Approval of recommendations of industry committee. The Committee's recommendations are hereby approved.

§ 655.2 Wage rates. (a) (1) Wages at a rate of not less than 21 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the woven and knitted fabric glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 45 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the woven and knitted fabric glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in machine operating or in operations known to the industry as cutting, laying off, sizing, banding, and boxing, and who is engaged in commerce or in the production of goods for commerce.

(3) Wages at a rate of not less than 29 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the woven and knitted fabric glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in operations other than hand sewing, machine operating, and operations known to the industry as cutting, laying off, sizing, banding, and boxing, and who

is engaged in commerce or in the production of goods for commerce.

(b) (1) Wages at a rate of not less than 25 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the leather glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 52 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the leather glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in machine operating, or in any operations known to the industry as cutting, laying off, sizing, banding, and boxing, and who is engaged in commerce or in the production of goods for commerce.

(3) Wages at a rate of not less than 29 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the leather glove division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in operations other than hand sewing, machine operating, and operations known to the industry as cutting, laying off, sizing, banding, and boxing, and who is engaged in commerce or in the production of goods for commerce.

(c) (1) Wages at a rate of not less than 21 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the silk, rayon, and nylon underwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 34 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the silk, rayon, and nylon underwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, pinning, washing, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(d) (1) Wages at a rate of not less than 17½ cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the cotton underwear and infants' underwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sew-

ing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the cotton underwear and infants' underwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, stamping, machine operating, sorting, washing, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(e) (1) Wages at a rate of not less than 17½ cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the infants' wear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the infants' wear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, pinning, washing, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(f) (1) Wages at a rate of not less than 17½ cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the needlepoint division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, embroidery and embellishing by hand and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the needlepoint division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, stamping, sorting, cleaning, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(g) (1) Wages at a rate of not less than 17½ cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the household art linen division of the

needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the household art linen division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, ribboning, washing, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(h) (1) Wages at a rate of not less than 17½ cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the handkerchief and square scarf division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the handkerchief and square scarf division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, ribboning, washing, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(i) (1) Wages at a rate of not less than 28 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the children's dresses division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 31 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the children's dresses division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, cleaning, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(j) Wages at a rate of not less than 33 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the corsets, brassieres, and allied garments division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(k) Wages at a rate of not less than 32 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the crochet slipper division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(l) Wages at a rate of not less than 35 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the crochet beading division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(m) Wages at a rate of not less than 35 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the bullion embroidery division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(n) Wages at a rate of not less than 36 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the corde and bonnaz embroidery and corde handbag division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(o) (1) Wages at a rate of not less than 28 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the women's blouses, dresses, and neckwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 35 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the women's blouses, dresses, and neckwear division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, cleaning, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

(p) Wages at a rate of not less than 45 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the fur garment division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

(q) (1) Wages at a rate of not less than 21 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the miscellaneous division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in hand sewing operations, including, but not by way of limitation, hand drawing, hand rolling, and embroidering and embellishing by hand, and who is engaged in commerce or in the production of goods for commerce.

(2) Wages at a rate of not less than 30 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the miscellaneous division of the needlework and fabricated textile products industry in Puerto Rico who is engaged in other operations, including, but not by way of limitation, cutting, machine operating, stamping, sorting, cleaning, finishing, pressing, examining, and packing, and who is engaged in commerce or in the production of goods for commerce.

§ 655.3 Notices of order. Every employer employing any employees so engaged in commerce or in the production of goods for commerce in the needlework and fabricated textile products industry in Puerto Rico shall post and keep posted in a conspicuous place in each department of his establishment where such employees are working such notices of this order as shall be prescribed, from time to time, by the Wage and Hour Division of the United States Department of Labor and shall give such other notice as the Division may prescribe.

§ 655.4 Definition of the needlework and fabricated textile products industry in Puerto Rico and its divisions. (a) The needlework and fabricated textile products industry in Puerto Rico, to which this part shall apply, is hereby defined as follows: The manufacture from any material of all apparel and apparel furnishings and accessories may by the knitting, crocheting, cutting, sewing, embroidering or other processes, and the manufacture of all textiles and textile products except the manufacture of hooked rugs and products or activities included in the following industries in Puerto Rico as defined in the wage orders for such industries: The shoe manufacturing and allied industries, the textile and textile products industry, the button, buckle, and jewelry industry, the hosiery industry, the hairnet industry, the artificial flower industry, the men's and boys' clothing and related products industry, and the handicraft products industry. This definition includes, but without limitation, handkerchiefs, scarves and mufflers; gloves; women's,

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misses', girls' and infants' outerwear, underwear, and nightwear; women's and misses' corsets and allied garments; millinery; handbags (except handbags made by hand out of raffia, maguey, straw, or similar materials); household art linens; needlepoint; embroideries and trimmings; curtains, draperies, and bedspreads; and miscellaneous fabricated textile products.

This definition supersedes the definitions contained in any and all wage orders heretofore issued for other industries in Puerto Rico to the extent that such definitions include products or operations covered by the definition of this industry.

(b) The separable divisions of the industry, as defined in paragraph (a) of this section, to which this part and its several provisions shall apply, are hereby defined as follows:

(1) *Woven and knitted fabric glove division.* The term woven and knitted fabric glove division shall mean the manufacture of all gloves and mittens from woven or knitted fabrics.

(2) *Leather glove division.* The term leather glove division shall mean the manufacture of all gloves and mittens from leather or from leather in combination with woven or knitted fabrics.

(3) *Silk, rayon and nylon underwear division.* The term silk, rayon and nylon underwear division shall mean the manufacture, from any woven or knitted fabric except cotton or from any woven or knitted fabric containing a mixture of cotton and other fibers, of women's, misses' and children's underwear and nightwear, including, but not by way of limitation, slips, nightgowns, negligees, panties, step-ins, pajamas, and similar articles.

(4) *Cotton underwear and infants' underwear division.* The term cotton underwear and infants' underwear division shall mean the manufacture from cotton of women's, misses' and children's underwear and nightwear, including, but not by way of limitation, slips, nightgowns, negligees, panties, step-ins, pajamas, and similar articles, and the manufacture of underwear and nightwear for infants under three years of age.

(5) *Infants' wear division.* The term infants' wear division shall mean the manufacture of dresses, rompers, creepers, sportswear and play apparel, for infants under three years of age.

(6) *Needlepoint division.* The term needlepoint division shall mean the manufacture of needlepoint on canvas or other material.

(7) *Household art linen division.* The term household art linen division shall mean the manufacture of household art linens including, but not by way of limitation, table cloths, napkins, bridge sets, luncheon cloths, table covers, sheets, pillow cases, and towels.

(8) *Handkerchief and square scarf division.* The term handkerchief and square scarf division shall mean the manufacture of plain, scalloped or ornamented handkerchiefs and square scarves.

(9) *Children's dresses division.* The term children's dresses division shall

mean the manufacture of dresses for children over three years of age.

(10) *Corsets, brassieres, and allied garments division.* The term corsets, brassieres, and allied garments division shall mean the manufacture of corsets, brassieres, brassiere pads, girdles, sanitary belts, foundation garments, and similar items.

(11) *Crochet slipper division.* The term crochet slipper division shall mean the manufacture of slippers, slipper socks, mukluks, and similar types of footwear (except infants' bootees) made by a crocheting or knitting process.

(12) *Crochet beading division.* The term crochet beading division shall mean the embroidery of any article by a crochet beading process and all operations directly incidental to such embroidery.

(13) *Bullion embroidery division.* The term bullion embroidery division shall mean the manufacture of emblems and insignia made of bullion embroidery and the embroidery of any other articles with bullion threads and all operations directly incidental to such embroidery.

(14) *Corde and bonnaz embroidery and corde handbag division.* The term corde and bonnaz embroidery and corde handbag division shall mean the manufacture of corde handbags, corde plates for handbags, and other articles or trimmings made on a bonnaz embroidery machine.

(15) *Women's blouses, dresses, and neckwear division.* The term women's blouses, dresses and neckwear division shall mean the manufacture of women's and misses' blouses, waists, dresses, smocks, aprons, neckwear (including collar and cuff sets) and scarves (except square scarves).

(16) *Fur garment division.* The term fur garment division shall mean the manufacture of fur coats and other fur garments, accessories and trimmings.

(17) *Miscellaneous division.* The term miscellaneous division shall mean all products and activities included in the needlework and fabricated textile products industry, as defined in paragraph (a) of this section, which are not included in any of the other divisions of the industry as defined in this section.

Signed at Washington, D. C., this 3d day of May 1951.

F. GRANVILLE GRIMES, Jr.,
Acting Administrator, Wage
and Hour and Public Con-
tracts Divisions.

[F. R. Doc. 51-5303; Filed, May 4, 1951;
9:03 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter III—Office of Price Stabilization, Economic Stabilization Agency

[Ceiling Price Regulation 6, Amdt. 6]

CPR 6—FATS AND OILS

RAW AND ACIDULATED SOAPSTOCKS

Pursuant to the Defense Production Act of 1950 (Pub. Law 774, 81st Cong.), Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this

Amendment 6 to Ceiling Price Regulation 6 is hereby issued.

STATEMENT OF CONSIDERATIONS

This amendment establishes specific ceiling prices for raw and acidulated soapstocks derived from domestic vegetable oils. Soapstock is the residue resulting from the refining of vegetable oils and is used principally in the production of fatty acids. The key price is 6¢ a pound for raw soapstock which is on a 50 percent total fatty acid basis. Corresponding to this 6¢ price for raw soapstock is a ceiling of 12½¢ a pound for acidulated soapstock. This differential reflects concentration to a 95 percent total fatty acid basis and the cost of acidulation and recovery. Provision is also made for differentials for point of delivery, grade and type of container.

Two major considerations were involved in selecting the 6¢ level.

To the refiner of vegetable oils, soapstock is a by-product obtained in the alkali refining process. The higher the value of the soapstock, the lower the cost of refining. Savings in refining costs mean savings to the consumer on such important end products as shortening, margarine, salad oil and salad dressings. This consideration was taken into account when the specific ceilings were established on refined cottonseed oil, soybean oil and corn oil and the 6¢ ceilings on soapstock established by a number of refiners under the General Ceiling Price Regulation, were used in calculating refining differentials. It was recognized by the refiners and the OPS that in no sense was a by-product credit equal to 6¢ a pound a guarantee, but rather was only permitted.

To the manufacturer of fatty acids, on the other hand, soapstock is one of several alternative raw materials. The degree of interchangeability of fatty acids made from vegetable oil soapstock and those made from tallow and greases differs from product to product in which fatty acids are used. Where vegetable and animal fatty acids are closely competitive, the former will be at a disadvantage provided soapstock sells at the 12½¢ ceiling (acidulated basis). This is the case since when fatty acids are made from acidulated soapstocks, no glycerine is obtained as a by-product. When, on the other hand, fatty acids are manufactured from tallow, for which the ceiling price is 15¢ on the fancy grade, about 4¢ worth of glycerine is obtained as a by-product. In the manufacture of products in which vegetable fatty acids are superior, no problem will arise because of their higher cost as against animal fatty acids. After full discussion of these considerations with representative groups of both refiners and vegetable fatty acid producers, it was concluded by this Office that market factors would obviate any dangers of substantial hardships.

AMENDATORY PROVISIONS

Ceiling Price Regulation 6 is amended in the following respects:

1. A new section 17 is added to the regulation to read as follows:

SEC. 17. *Vegetable oil soapstocks*—(a) Ceiling prices of raw soapstocks. The

ceiling prices of the following raw soapstocks, delivered in tank cars or tank wagons, shall be the following prices:

RAW SOAPSTOCKS—BASIS 50 PERCENT T. F. A.
[Cents per pound]

	New York	Chicago and Cincinnati	Los Angeles and San Francisco
Domestic vegetable oil soapstock (foots) including but not necessarily limited to cottonseed, soya, corn, peanut or any mixture thereof.	6.125	6	6

(1) Where any of the above soapstocks (foots) are delivered to other destinations, the ceiling price shall be the price set forth above for the city nearest the point to which the soapstock is delivered, plus or minus the usual normal differential that prevailed prior to January 1, 1951, between the point to which the soapstock is delivered and the nearest city named in the above schedule.

(2) The usual or normal differentials for grade, above or below the listed grades, shall continue to apply.

(b) *Ceiling prices of acidulated soapstocks.* The ceiling prices of acidulated soapstocks, delivered in tank cars or tank wagons shall be the following prices:

ACIDULATED SOAPSTOCKS—BASIS 95 PERCENT T. F. A.

	New York	Chicago and Cincinnati	Los Angeles and San Francisco
Domestic vegetable oil acidulated soapstock including but not necessarily limited to cottonseed, soya, corn, peanut or any mixture thereof.	12.625	12.5	12.5

(1) Where any of the above acidulated soapstocks are delivered to other destinations, the ceiling price shall be the price set forth above for the city nearest the point to which the acidulated soapstock is delivered, plus or minus the usual or normal differential that prevailed prior to price control between the point to which the acidulated soapstock is delivered and the nearest city named in the above schedule.

(2) The usual or normal differentials for grade, above or below the listed grades, shall continue to apply.

(3) The usual or normal differential for type of container shall continue to apply.

(4) The terms "domestic vegetable oil soapstock" and "domestic vegetable oil acidulated soapstock" mean soapstocks derived from fats and oils not enumerated in section 14 of General Ceiling Price Regulation.

(Sec. 704, Pub. Law 774, 81st Cong.)

Effective date: This amendment shall be effective May 3, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

MAY 3, 1951.

[F. R. Doc. 51-5302; Filed, May 3, 1951;
4:00 p.m.]

[Ceiling Price Regulation 22, Amdt. 1]
CPR 22—MANUFACTURERS' GENERAL CEILING PRICE REGULATION
ADDITIONAL INSTRUCTIONS FOR COMPLETING OPS PUBLIC FORM NO. 8

Pursuant to the Defense Production Act of 1950 (Pub. Law 774, 81st Cong.), Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this Amendment 1 to Ceiling Price Regulation 22 is hereby issued.

STATEMENT OF CONSIDERATIONS

This amendment is an addition to the instructions for completing OPS Public Form 8. By the use of appropriate codes, selected from the list set forth in this amendment, each manufacturer reporting in accordance with the provisions of sections 46 and 48 of CPR-22 will fill in the box in the upper right-hand corner, labelled "Code for item 1." The prior insertion of designated codes by manufacturers will facilitate analysis and examination of reports by the Office of Price Stabilization. It should be noted that the codes cover the entire range of manufacturing industries, which means that a number of commodity classifications not subject to CPR-22 are also included. Appendix A is, therefore, still controlling as to commodities and transactions exempt from CPR-22.

AMENDATORY PROVISIONS

Ceiling Price Regulation 22 is amended by this addition to instructions for completing OPS Public Form No. 8, contained in Appendix D of CPR-22.

ITEM 9 CODE NUMBER. (a) When you complete this form, insert in the box in the upper right-hand corner the appropriate 6-digit code for the category or product line covered by the report. Determine the code applicable to your report from the list of codes given below.

(b) The first two digits represent the OPS price branch concerned with your category or product line and the next four digits represent the industry class in the Standard Industrial Classification now widely used by private as well as Government agencies.

(c) Your careful selection of the appropriate 6-digit code from the list will expedite the sorting, classification, and analysis of the forms upon receipt in this office.

(d) Although a number of commodity classifications not subject to CPR-22 are included in the codes, Appendix A is nevertheless controlling as to commodities and transactions exempt from CPR-22.

NOTE: If prior to May 4, 1951, the date of issuance of this amendment, you mailed to the Office of Price Stabilization, Washington 25, D. C., Public Form No. 8, you need not mail another form relating to the same category or product line solely for the purpose of inserting the code.

LIST OF CODES TO BE USED BY MANUFACTURERS IN CODING ITEM 1 (CATEGORY OR PRODUCT LINE) ON PUBLIC FORM 8

FOOD AND KINDRED PRODUCTS

- 26-2011 Meat packing.
- 31-2012 Custom slaughtering.
- 26-2013 Sausages and other prepared meat products.
- 26-2014 Sausage casings.
- 27-2015 Poultry and small game dressing and packing.
- 32-2021 Creamery butter.
- 32-2022 Natural cheese.

- 32-2023 Condensed and evaporated milk.
- 32-2024 Ice cream and ices.
- 32-2025 Special dairy products.
- 26-2031 Canned sea food.
- 26-2032 Cured fish.
- 23-2033 Canned fruits, vegetables, and soups; preserves, jams, and jellies.
- 23-2034 Dried and dehydrated fruits and vegetables.
- 23-2035 Pickled fruits and vegetables; vegetable sauces and seasonings, salad dressings.
- 23-2037 Frozen fruits, vegetables, and sea foods.
- 24-2041 Flour and other grain-mill products.
- 24-2042 Prepared feeds for animals and fowls.
- 24-2-13 Cereal preparations.
- 24-2044 Rice cleaning and polishing.
- 24-2045 Blended and prepared flour.
- 24-2051 Bread and other bakery products (except biscuit, crackers, and pretzels).
- 24-2052 Biscuit, crackers, and pretzels.
- 25-2061 Cane sugar (except refining only).
- 25-2062 Cane-sugar refining.
- 25-2063 Beet sugar.
- 25-2071 Candy and other confectionery products.
- 25-2072 Chocolate and cocoa products.
- 25-2073 Chewing gum.
- 25-2081 Bottled soft drinks and carbonated waters.
- 25-2082 Malt liquors.
- 25-2083 Malt.
- 25-2084 Wines.
- 25-2085 Distilled, rectified, and blended liquors.
- 25-2091 Baking powder, yeast, and other leavening compounds.
- 22-2092 Shortening and other cooking and edible fats and oils, not elsewhere classified.
- 22-2093 Oleomargarine.
- 25-2094 Corn syrup, corn sugar, corn oil, and starch.
- 25-2095 Flavoring extracts and flavoring syrups, not elsewhere classified.
- 25-2096 Vinegar and cider.
- 25-2097 Manufactured ice.
- 25-2098 Macaroni, spaghetti, vermicelli, and noodles.
- 25-2099 Food preparations, not elsewhere classified.

TOBACCO MANUFACTURES

- 25-2111 Cigarettes.
- 25-2121 Cigars.
- 25-2131 Tobacco (chewing and smoking) and snuff.
- 25-2141 Tobacco stemming and redrying.

TEXTILE MILL PRODUCTS

- 52-2211 Scouring and combing plants.
- 52-2221 Yarn mills.
- 52-2222 Yarn throwing mills.
- 52-2223 Thread mills.
- 52-2231 Broad-woven fabric mills (cotton, silk, and synthetic fiber).
- 52-2232 Broad-woven fabric mills (woolen and worsted).
- 52-2241 Narrow fabrics and other small-wares mills (cotton, wool, silk, and synthetic fiber).
- 53-2251 Full-fashioned hosiery mills.
- 53-2252 Seamless-hosiery mills.
- 53-2253 Knit outerwear mills.
- 53-2254 Knit underwear mills.
- 53-2255 Knit glove mills.
- 52-2256 Knit-fabric mills.
- 52-2259 Knitting mills, not elsewhere classified.
- 52-2261 Dyeing and finishing textiles (except woolen and worsted textiles and knit goods).
- 52-2262 Dyeing and finishing woolen and worsted goods.
- 73-2271 Wool carpets, rugs, and carpet yarn.
- 73-2273 Carpets, rugs, and mats from fiber (except wool).

RULES AND REGULATIONS

73-2274	Linoleum, asphalted-felt-base, and other hard-surface floor coverings, not elsewhere classified.	LUMBER AND WOOD PRODUCTS (EXCEPT FURNITURE)	13-2789	Miscellaneous work related to bookbinding.	
53-2281	Fur-felt hats and hat bodies.	12-2411	Logging camps and logging contractors.	13-2791	Typesetting.
53-2282	Wool-felt hats and hat bodies.	12-2421	Sawmills and planing mills, general.	13-2792	Engraving and plate printing.
53-2283	Straw hats.	12-2422	Veneer mills.	13-2793	Photoengraving.
53-2284	Hatters' fur.	12-2423	Shingle mills.	13-2794	Electrotyping and stereotyping.
54-2291	Felt goods (except woven felts and hats).	12-2424	Cooperage stock mills.		CHEMICALS AND ALLIED PRODUCTS
73-2292	Lace goods.	12-2425	Excelsior mills.	93-2811	Sulfuric acid.
73-2293	Paddings and upholstery filling.	12-2429	Special-product sawmills, not elsewhere classified.	93-2812	Alkalies and chlorine.
52-2294	Processed waste and recovered fibers.	12-2431	Millwork plants.	93-2819	Industrial inorganic chemicals, not elsewhere classified.
93-2295	Artificial leather, oilcloth, and other impregnated and coated fabrics (except rubberized).	12-2432	Plywood plants.	64-2821	Cyclic (coal-tar) crudes.
52-2296	Linen goods.	12-2433	Prefabricated wooden buildings and structural members.	93-2822	Intermediates, dyes, color lakes, and toners.
52-2297	Jute goods (except felt).	12-2441	Fruit and vegetable baskets.	93-2823	Plastics materials and elastomers, except synthetic rubber.
52-2298	Cordage and twine.	74-2442	Rattan and willow ware (except furniture and fruit and vegetable baskets).	92-2824	Synthetic rubber.
52-2299	Textile goods, not elsewhere classified.	12-2443	Cigar boxes.	52-2825	Synthetic fibers.
	APPAREL AND OTHER FINISHED PRODUCTS MADE FROM FABRICS AND SIMILAR MATERIALS	12-2444	Wooden boxes (except cigar boxes).	93-2826	Explosives.
53-2311	Men's, youths', and boys' suits, coats, and overcoats.	12-2445	Cooperage.	93-2829	Industrial organic chemicals, not elsewhere classified.
53-2312	Suit and coat findings.	12-2491	Wood preserving.	93-2831	Biological products.
53-2321	Men's, youths', and boys' shirts (except work shirts), collars, and nightwear.	12-2492	Lasts and related products.	93-2832	Botanical products.
53-2322	Men's, youths', and boys' underwear.	74-2493	Mirror frames and picture frames.	93-2833	Inorganic and organic medicinal chemicals.
53-2323	Men's, youths', and boys' neckwear.	74-2499	Wood products, not elsewhere classified.	93-2834	Pharmaceutical preparations.
53-2325	Men's, youths', and boys' cloth hats and caps.		FURNITURE AND FIXTURES	22-2841	Soap and glycerin.
53-2326	Hat and cap materials.	73-2511	Wood household furniture, except upholstered.	22-2842	Cleaning and polishing preparations.
53-2327	Men's, youths', and boys' separate trousers.	73-2512	Wood household furniture, upholstered.	22-2843	Sulfonated oils and assistants.
53-2328	Work shirts.	73-2513	Reed and rattan furniture.	42-2851	Paints, varnishes, lacquers, japans, and enamels.
53-2329	Men's, youths', and boys' work, sport, and other clothing, not elsewhere classified.	73-2514	Metal household furniture.	93-2852	Inorganic color pigments.
53-2331	Women's and misses' blouses and waists.	73-2515	Mattresses and bedsprings.	42-2853	Whiting, putty, wood fillers, and allied paint products.
53-2333	Women's and misses' dresses.	73-2519	Household furniture, not elsewhere classified.	93-2861	Hardwood distillation.
53-2334	Household apparel.	72-2521	Wood office furniture.	93-2862	Softwood distillation.
53-2337	Women's and misses' suits, coats (except fur coats), and skirts.	72-2522	Metal office furniture.	93-2863	Gum naval stores.
53-2338	Women's neckwear and scarfs.	72-2531	Public-building and related furniture.	93-2864	Natural dyeing materials.
53-2339	Women's and misses' outerwear, not elsewhere classified.	72-2532	Professional furniture.	93-2865	Natural tanning materials.
53-2341	Women's, misses', children's, and infants' underwear and nightwear.	72-2541	Partitions, shelving, lockers, and office and store fixtures.	24-2871	Fertilizers (manufacturing and mixing).
53-2342	Corsets and allied garments.	42-2561	Window and door screens and weather strip.	24-2872	Fertilizers (mixing only).
53-2351	Millinery.	73-2562	Window shades.	22-2881	Cottonseed oil mills.
53-2361	Children's and infants' dresses.	73-2563	Venetian blinds.	22-2882	Linseed oil mills.
53-2363	Children's and infants' coats.	72-2591	Restaurant furniture.	22-2883	Soybean oil mills.
53-2369	Children's and infants' outerwear, not elsewhere classified.	73-2599	Furniture and fixtures, not elsewhere classified.	22-2884	Vegetable oil mills, not elsewhere classified.
53-2371	Fur goods.		PAPER AND ALLIED PRODUCTS	22-2885	Marine animal oils.
53-2381	Dress and semidress gloves and mittens (fabric, fabric and leather combined).	13-2611	Pulp mills.	22-2886	Grease and tallow.
53-2382	Work gloves and mittens (fabric, fabric and leather combined).	13-2612	Paper and paperboard mills (except building-paper and building-board mills).	22-2887	Fatty acids.
53-2383	Suspenders, garters, and related products.	13-2613	Building-paper and building-board mills.	22-2889	Animal oils, not elsewhere classified.
53-2384	Robes and dressing gowns.	13-2641	Paper coating and glazing.	93-2891	Printing ink.
53-2385	Raincoats and other waterproof outer garments.	13-2651	Envelopes.	93-2892	Essential oils.
53-2386	Leather and sheep-lined clothing.	13-2661	Paper bags.	93-2893	Perfumes, cosmetics, and other toilet preparations.
53-2387	Belts.	13-2671	Paperboard boxes: folded, set-up, and corrugated.	93-2894	Glue and gelatin.
53-2388	Handkerchiefs.	13-2674	Fiber cans, tubes, drums, and similar products.	93-2895	Bone black, carbon black, and lamp black.
53-2389	Apparel, not elsewhere classified.	13-2691	Die-cut paper and paperboard; and cardboard.	93-2896	Compressed and liquefied gases.
73-2391	Curtains and draperies.	13-2693	Wall paper.	24-2897	Insecticides and fungicides.
73-2392	Housefurnishings (except curtains and draperies).	13-2694	Pulp goods, pressed and molded.	93-2898	Salt.
52-2393	Textile bags.	13-2699	Converted paper products, not elsewhere classified.	93-2899	Chemicals and chemical products, not elsewhere classified.
73-2394	Canvas products.		PRINTING, PUBLISHING, AND ALLIED INDUSTRIES		PRODUCTS OF PETROLEUM AND COAL
53-2395	Pleating, stitching, and tucking for the trade.	13-2711	Newspapers.	63-2911	Petroleum refining.
53-2396	Trimmings, stamped arts goods, and art needlework.	13-2721	Periodicals.	64-2931	Beehive coke ovens.
53-2397	Schiffli-machine embroideries.	13-2731	Books: publishing, publishing and printing.	64-2932	Byproduct coke ovens.
53-2398	Embroideries, except Schiffli-machine.	13-2732	Book printing.	42-2951	Paving mixtures and blocks.
73-2399	Fabricated textile products, not elsewhere classified.	13-2741	Miscellaneous publishing.	42-2952	Roofing felts and coatings.
		13-2751	Commercial printing.	64-2991	Fuel briquets and packaged fuel.
		13-2761	Lithographing.	63-2992	Lubricating oils and greases not made in petroleum refineries.
		13-2771	Greeting cards.	63-2999	Products of petroleum and coal, not elsewhere classified.
		13-2781	Bookbinding.		RUBBER PRODUCTS
		13-2782	Blankbook making and paper ruling.	92-3011	Tires and inner tubes.
		13-2783	Library and loose-leaf binder manufacturing.	92-3021	Rubber footwear.
				92-3031	Reclaimed rubber.
				92-3099	Rubber industries, not elsewhere classified.
					LEATHER AND LEATHER PRODUCTS
				54-3111	Leather tanning and finishing.
				44-3121	Industrial leather belting and packing.

54-3131	Boot and shoe cut stock and findings.	FABRICATED METAL PRODUCTS (EXCEPT ORDNANCE, MACHINERY AND TRANSPORTATION EQUIPMENT)	44-3566	Mechanical power-transmission equipment (except ball and roller bearings).
54-3141	Footwear (except house slippers and rubber footwear).	43-3411 Tin cans and other tinware.	44-3567	Industrial furnaces and ovens.
54-3142	House slippers.	74-3421 Cutlery.	42-3568	Mechanical stokers, domestic and industrial.
53-3151	Dress and semidress leather gloves.	74-3422 Edge tools.	44-3569	General industrial machinery and equipment, not elsewhere classified.
53-3152	Leather work gloves and mittens.	74-3423 Hand tools (except edge tools, machine tools, files, and saws).	72-3571	Computing machines and cash registers.
74-3161	Suitcases, briefcases, bags, trunks, and other luggage.	74-3424 Files.	72-3572	Typewriters.
53-3171	Women's handbags and purses.	74-3425 Hand saws and saw blades.	72-3575	Vending, amusement, and other coin-operated machines.
74-3172	Small leather goods.	74-3429 Hardware, not elsewhere classified.	72-3576	Scales and balances.
54-3192	Saddlery, harness, and whips.	42-3431 Enameled-iron and metal sanitary ware and other plumbers' supplies.	72-3579	Office and store machines and devices, not elsewhere classified.
54-3199	Leather goods, not elsewhere classified.	42-3432 Oil burners, domestic and industrial.	72-3581	Domestic laundry equipment.
	STONE, CLAY AND GLASS PRODUCTS	42-3439 Heating and cooking apparatus (except electric), not elsewhere classified.	44-3582	Commercial laundry, dry-cleaning, and pressing machines.
42-3211	Flat glass.	42-3441 Fabricated structural steel and ornamental metal work.	72-3583	Sewing machines.
42-3221	Glass containers.	42-3442 Metal doors, sash, frames, molding, and trim.	72-3584	Vacuum cleaners.
74-3229	Pressed and blown glass and glassware, not elsewhere classified.	44-3443 Boiler shop products.	72-3585	Refrigerators, refrigeration machinery, and complete air-conditioning units.
74-3231	Glass products made of purchased glass.	42-3444 Sheet-metal work.	45-3586	Measuring-and-dispensing pumps.
42-3241	Cement, hydraulic.	74-3461 Vitreous-enamelled products.	72-3589	Service-industry and household machines, not elsewhere classified.
42-3251	Brick and hollow tile.	45-3462 Automobile stampings.	44-3591	Valves and fittings (except plumbers' valves).
42-3253	Floor and wall tile, except quarry tile.	44-3463 Stamped and pressed metal products (except automobile stampings).	42-3592	Fabricated pipe and fittings.
42-3254	Sewer pipe.	43-3464 Powder metallurgy.	44-3593	Ball and roller bearings.
42-3255	Clay refractories.	44-3465 Enameling, jpanning, and lacquering.	44-3599	Machine shops (Jobbing and repair).
42-3259	Structural clay products, not elsewhere classified.	44-3466 Galvanizing and other hot-dip coating.		ELECTRICAL MACHINERY, EQUIPMENT, AND SUPPLIES
42-3261	Vitreous and semivitreous plumbing fixtures.	74-3467 Engraving on metal.	44-3611	Wiring devices and supplies.
74-3262	Vitreous-china table and kitchen articles.	44-3468 Electroplating, plating, and polishing.	44-3612	Carbon and graphite products for use in the electrical industry.
74-3263	Fine earthenware (whiteware) table and kitchen articles.	42-3471 Lighting fixtures.	44-3613	Instruments for indicating, measuring, and recording electrical quantities and characteristics.
42-3264	Porcelain electrical supplies.	43-3481 Nails and spikes.	44-3614	Motors, generators, and motor-generator sets.
74-3265	China decorating for the trade.	43-3489 Wirework, not elsewhere classified.	44-3615	Power and distribution transformers.
74-3269	Pottery products, not elsewhere classified.	43-3491 Metal shipping barrels, drums, kegs, and pails.	44-3616	Switchgear, switchboard apparatus, and industrial controls.
42-3271	Concrete products.	72-3492 Safes and vaults.	44-3617	Electrical welding apparatus.
42-3272	Gypsum products.	44-3493 Steel springs.	44-3619	Electrical equipment for industrial use, not elsewhere classified.
42-3274	Lime.	43-3494 Bolts, nuts, washers, and rivets.	72-3621	Electrical appliances.
42-3275	Mineral wool.	43-3495 Screw-machine products.	44-3631	Insulated wire and cable.
44-3291	Abrasive products.	43-3496 Collapsible tubes.	44-3641	Electrical equipment for motor vehicles, aircraft, and railway locomotives and cars.
42-3292	Asbestos products.	43-3497 Gold, silver, tin, aluminum, and other foil.	74-3651	Electric lamps.
42-3293	Steam and other packing, and pipe and boiler covering.	74-3499 Fabricated metal products, not elsewhere classified.	74-3661	Radios, radio and television equipment (except radio tubes), radar and related detection apparatus, and phonographs.
43-3294	Natural graphite: ground, refined, or blended.		44-3662	Radio tubes.
43-3295	Minerals and earths: ground or otherwise treated.	MACHINERY (EXCEPT ELECTRICAL)	74-3663	Phonograph records.
43-3296	Sand-lime brick, block and tile.	44-3511 Steam engines, turbines, and water wheels.	44-3664	Telephone and telegraph equipment.
43-3297	Nonclay refractories.	44-3519 Diesel and semi-Diesel engines; and other internal-combustion engines, not elsewhere classified.	44-3669	Communication equipment, not elsewhere classified.
43-3298	Statuary and art goods (factory production).	44-3521 Tractors.	44-3691	Storage batteries.
	PRIMARY METAL INDUSTRIES	44-3522 Agricultural machinery (except tractors).	44-3692	Primary batteries (dry and wet).
43-3311	Blast furnaces.	44-3531 Construction, mining and similar machinery (except oil-field machinery and tools).	44-3693	X-ray and therapeutic apparatus and non-radio electronic tubes.
43-3312	Steel works and rolling mills.	44-3532 Oil-field machinery and tools.	74-3699	Electrical products, not elsewhere classified.
43-3313	Electrometallurgical products.	44-3541 Machine tools.		TRANSPORTATION EQUIPMENT
43-3321	Gray-iron foundries.	44-3542 Metalworking machinery (except machine tools).	45-3711	Motor vehicles.
43-3322	Malleable-iron foundries.	44-3543 Machine-tool accessories, other metalworking-machinery accessories, and machinists' precision tools.	45-3712	Passenger-car bodies.
43-3323	Steel foundries.	44-3551 Food-products machinery.	45-3713	Truck and bus bodies.
43-3331	Primary smelting and refining of copper.	44-3552 Textile machinery.	45-3714	Motor-vehicle parts and accessories.
43-3332	Primary smelting and refining of lead.	44-3553 Woodworking machinery.	45-3715	Truck trailers.
43-3333	Primary smelting and refining of zinc.	44-3554 Paper-industries machinery.	45-3716	Automobile trailers (for attachment to passenger cars).
43-3334	Primary refining of aluminum.	44-3555 Printing-trades machinery and equipment.	44-3721	Aircraft.
43-3335	Primary refining of magnesium.	44-3559 Special-industry machinery, not elsewhere classified.	44-3722	Aircraft engines and engine parts.
43-3339	Primary smelting and refining of nonferrous metals, not elsewhere classified.	44-3561 Pumps, air and gas compressors, and pumping equipment.	44-3723	Aircraft propellers and propeller parts.
43-3341	Secondary smelting and refining of nonferrous metals and alloys.	44-3562 Elevators and escalators.	44-3729	Aircraft parts and auxiliary equipment, not elsewhere classified.
43-3351	Rolling, drawing, and alloying of copper.	44-3563 Conveyors and conveying equipment.	44-3731	Ship building and repairing.
43-3352	Rolling, drawing, and alloying of aluminum.	44-3564 Blowers, exhaust and ventilating fans.		
43-3359	Rolling, drawing, and alloying of nonferrous metals, not elsewhere classified.	44-3565 Industrial trucks, tractors, trailers, and stackers.		
43-3361	Nonferrous foundries.			
43-3391	Iron and steel forgings.			
43-3392	Wire drawing.			
43-3393	Welded and heavy-riveted pipe.			
43-3399	Primary metal industries, not elsewhere classified.			

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74-3732 Boat building and repairing.
 44-3741 Locomotives and parts.
 44-3742 Railroad and street cars.
 45-3751 Motorcycles, bicycles, and parts.
 74-3799 Transportation equipment, not elsewhere classified.

PROFESSIONAL, SCIENTIFIC, AND CONTROLLING INSTRUMENTS; PHOTOGRAPHIC AND OPTICAL GOODS; WATCHES AND CLOCKS

72-3811 Laboratory, scientific, and engineering instruments (except surgical, medical, and dental).
 44-3821 Mechanical measuring and controlling instruments.
 72-3831 Optical instruments and lenses.
 72-3841 Surgical and medical instruments.
 72-3842 Surgical and orthopedic appliances and supplies; and personal safety devices, not elsewhere classified.
 72-3843 Dental equipment and supplies.
 72-3851 Ophthalmic goods.
 74-3861 Photographic equipment and supplies.
 74-3871 Watches, clocks, and parts (except watchcases).
 74-3872 Watchcases.

MISCELLANEOUS MANUFACTURING INDUSTRIES

74-3911 Jewelry (precious metal).
 74-3912 Jewelers' findings and materials.
 74-3913 Lapidary work.
 74-3914 Silverware and plated ware.
 74-3931 Pianos.
 74-3932 Organs.
 74-3933 Piano and organ parts and materials.
 74-3939 Musical instruments, parts, and materials, not elsewhere classified.
 73-3941 Games and toys (except dolls, and children's vehicles).
 73-3942 Dolls.
 74-3943 Children's vehicles.
 74-3949 Sporting and athletic goods, not elsewhere classified.
 72-3951 Pens, mechanical pencils, and pen points.
 72-3952 Lead pencils and crayons.
 72-3953 Hand stamps, stencils, and brands.
 72-3954 Artists' materials.
 72-3955 Carbon paper and inked ribbons.
 74-3961 Costume jewelry and costume novelties (except precious metal).
 74-3962 Feathers, plumes, and artificial flowers.
 74-3963 Buttons.
 74-3964 Needles, pins, hooks and eyes, and similar notions.
 74-3971 Fabricated plastics products, not elsewhere classified.
 74-3981 Brooms and brushes.
 42-3982 Cork products.
 13-3983 Matches.
 74-3984 Candles.
 93-3985 Fireworks and pyrotechnics.
 74-3986 Jewelry cases and instrument cases.
 74-3987 Lamp shades.
 72-3988 Morticians' goods.
 72-3991 Beauty-shop and barber-shop equipment.
 54-3992 Furs, dressed and dyed.
 72-3993 Signs and advertising displays.
 74-3994 Hair work.
 74-3995 Umbrellas, parasols, and canes.
 74-3996 Tobacco pipes and cigarette holders.
 72-3997 Soda-fountain and beer-dispensing equipment.
 44-3998 Models and patterns (except paper patterns).
 74-3999 Miscellaneous fabricated products, not elsewhere classified.

ORDNANCE AND ACCESSORIES

44-1911 Guns, howitzers, mortars, and related equipment.
 44-1921 Artillery ammunition.
 44-1922 Ammunition loading and assembling.
 44-1929 Ammunition, not elsewhere classified.
 44-1931 Tanks and tank components.

44-1941 Sighting and fire-control equipment.
 74-1951 Small arms.
 74-1961 Small arms ammunition.
 44-1999 Ordnance and accessories, not elsewhere classified.

(Sec. 704, Pub. Law 774, 81st Cong.)

This amendment will become effective May 28, 1951.

NOTE: The record-keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

EDWARD F. PHELPS, Jr.,
Acting Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5347; Filed, May 4, 1951;
 10:39 a. m.]

[Ceiling Price Regulation 30]

CPR 30—MACHINERY AND RELATED MANUFACTURED GOODS

Pursuant to the Defense Production Act of 1950 (Pub. Law 774, 81st Cong.), Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this Ceiling Price Regulation 30 is hereby issued.

STATEMENT OF CONSIDERATIONS

In general this regulation covers the following types of commodities: Prime movers, industrial power apparatus, material working and fabricating machinery, machine tools, farm equipment, automotive equipment and parts (with the exception of passenger automobiles), insulated electric wire and cable, construction and mining machinery, electrical equipment, railroad and street railway equipment, auxiliary industrial equipment, forgings, screw machine products, stampings, fabricated structural steel shapes, plates and bars, industrial, pharmaceutical, optical and laboratory glassware, marine equipment, aircraft parts, related equipment of various kinds, and adjuncts, subassemblies and parts for the foregoing. While the industries dealing in these types of commodities are comprised of many groups, each with special problems, these industries are so closely integrated by force of common marketing practices and production problems that a uniform treatment for these industries as a whole is appropriate. This regulation also covers installation and erection services performed by the manufacturer, or a parent, affiliate or subsidiary of the manufacturer, of the particular commodity which is being installed or erected. This has been done because of the practice of the affected industries of pricing both the commodity and the installation or erection services in substantially the same manner.

This regulation is a companion measure to CPR 22, the Manufacturers General Ceiling Price Regulation. The pricing methods used in this regulation are substantially the same as those used in CPR 22 with certain exceptions which are made necessary by the nature of the industries covered by this regulation. Accordingly, the Statement of Considerations involved in the issuance of CPR 22 is equally applicable to this regulation.

The only substantial area of difference between the pricing technique of this regulation and of CPR 22 is in the determination of base period prices. In the first place, because of the fact that a very substantial number of manufacturers in this area have customarily published list prices, the first base period price, which is required to be used, is the published list price. Beyond that the base period price technique recognizes the long cycle operations common to a majority of the industries and provides for the use of the delivered price only if there was no contract price or written offering price available to the manufacturer as a basis for his price determinations.

One of the most important characteristics of the industries covered by this regulation is that a large proportion of the production is devoted to specially engineered or specially designed commodities. Accordingly, it is necessary in devising price controls for these industries to establish a method by which such commodities may be priced in accordance with industry practice. The pricing methods of this regulation are designed to price such commodities. Further, the pricing method used by this regulation for both modifications of base period commodities and entirely new commodities is adapted to the special problems of the industries producing the commodities covered by this regulation.

For commodities that are modified, the regulation provides that the manufacturer shall determine his base period price by adding or subtracting the increase or decrease in factory cost due to the modification. These costs are determined on the basis of costs in effect to the manufacturer during his base period. For entirely new commodities, the manufacturer determines his base period price by use of the costs and the method of determining price by relation to cost which were in effect during his base period for similar commodities. The additions for increases in costs of manufacturing materials and labor from the end of the base period are made to these base period prices.

The elements of permitted "labor costs" which are recognized for the purpose of determining additions to the pre-Korea base period prices differ from CPR 22 in that field erection and installation labor and product engineering, which is expended directly in the production of a particular commodity, are recognized as elements of "labor costs". This is done because this regulation covers these services and because of the widespread use of such product engineering and its importance as a cost factor in the industries covered by this regulation.

This regulation, like CPR 22, recognizes the cost of expendable tools, dies, jigs, fixtures, and like items as an element of manufacturing materials costs, and for sake of clarity specifically lists these items, which are important to the manufacturers of the commodities covered by this regulation.

Ceiling prices at the resellers' level are not established by this regulation. However, resellers' ceiling prices for the

commodities covered by this regulation will be established by a supplementary regulation following closely upon the issuance of this regulation. Until such a supplementary regulation is issued, ceiling prices for sales by resellers of commodities covered by this regulation will continue to be established by the General Ceiling Price Regulation.

While this regulation is designed to meet the problems of the industries it covers, it is recognized that there may be problems peculiar to some of these industries which may require some variation from the standard methods. Where this necessity is demonstrated by an affected industry, it is proposed to issue a supplementary regulation to treat with such problems.

The wide coverage of this regulation made it impossible to consult in detail with representatives of all the industries affected. However, in the preparation of this regulation conferences were held with many industry and trade association representatives.

In the judgment of the Director of Price Stabilization, the ceiling prices established by this regulation are generally fair and equitable to buyers and sellers alike and are necessary to effectuate the purposes of Title IV of the Defense Production Act of 1950.

REGULATORY PROVISIONS

COVERAGE

Sec.

1. Sellers and sales covered by this regulation.

CEILING PRICES ESTABLISHED

2. Ceiling prices established by this regulation.
3. General description of the pricing technique.

BASE PERIOD PRICES

4. Base period.
5. Category.
6. How to obtain your base period price.
7. Base period prices for commodities offered or delivered during the base period.
8. Base period prices for modified commodities.
9. Base period prices computed by formula.
10. Computation of ceiling price where you are unable to determine your base period cost.

HOW TO CALCULATE THE LABOR COST ADJUSTMENT

METHOD

11. General description of how to calculate the "labor cost adjustment."
12. How to calculate the "labor cost adjustment" upon the basis of your entire business.
13. How to calculate the "labor cost adjustment" upon the basis of a unit of your business.

HOW TO CALCULATE THE MATERIALS COST ADJUSTMENT

14. Manufacturing material.
15. General description of the methods available.
16. Omission of certain manufacturing materials from your calculations.
17. Method 1 (Aggregate method).
18. Method 2 (Individual commodity method).
19. Method 3 (Product line method using best selling commodity).
20. Method 4 (Composite bill of materials method).

SPECIAL INSTRUCTIONS TO BE FOLLOWED IN CALCULATING THE MATERIALS COST ADJUSTMENT

21. General nature of these instructions.

Sec.

22. How to compute the net cost to you of a manufacturing material as of a prescribed date.
23. How to compute net cost as of the applicable prescribed dates where you are using a substitute material not used during the base period.
24. Inclusion of transportation costs in the computation of net cost of a manufacturing material as of a prescribed date.
25. How to calculate the "materials cost adjustment" for joint products or by-products.
26. How to calculate the change in net cost of a manufacturing material which is produced in one unit of your business and transferred to another unit of your business.

SPECIAL PROVISIONS RELATING TO CEILING PRICES

27. General nature of these provisions.
28. Rounding ceiling prices.
29. Retention of GCPR ceiling price where the change in price is less than 1%.
30. Requirement for reduction of your ceiling price as otherwise determined for any increase in value of scrap or waste material.
31. Adjustment of ceiling prices quoted on a delivered basis for increases in transportation costs.
32. Optional method for determining a uniform ceiling price for a commodity manufactured in more than one plant.

MISCELLANEOUS PROVISIONS

33. Export sales.
34. Excise, sales and other similar taxes.
35. Prohibition against redetermination of ceiling prices.
36. Modification of ceiling prices by the Director of Price Stabilization.
37. Recalculation of ceiling prices and announcement of "materials cost increase factors".
38. Adjustable pricing.
39. Petitions for amendment.
40. Supplementary regulations.
41. Adjustment of ceiling prices where overall loss in operations results.
42. Use of "conversion steel" in calculating the "materials cost adjustment".
43. Temporary adjustments to carry out existing contracts.
44. Records and reports.
45. Definitions and explanations.
46. Prohibitions.
47. Transfers of business or stock in trade.
48. Charges lower than ceiling prices.
49. Evasion.
50. Violation.

AUTHORITY: Sections 1 to 50 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply Title IV, Pub. Law 774, 81st Cong., E. O. 10151, Sept. 9, 1950, 15 F. R. 6105, 3 CFR, 1950 Supp.

COVERAGE

SECTION 1. Sellers and sales covered by this regulation—(a) Commodities. This regulation covers you if you are a manufacturer located in the United States, its territories or possessions, or the District of Columbia. It applies to any sale of any new and unused commodity listed in Appendix A as to which you are the manufacturer, except sales at retail. With this exception, this regulation supersedes any regulation previously issued by the OPS, in so far as transactions covered by this regulation are concerned.

(b) Installation or erection services. If you are a manufacturer of a commodity covered by this regulation, or a parent, affiliate, or wholly owned subsidiary of the manufacturer, and you both sell that commodity and furnish the services required to install or erect that commod-

ity, your ceiling price for the installation or erection service, when performed by you, is also established by this regulation.

CEILING PRICES ESTABLISHED

SEC. 2. Ceiling prices established by this regulation. This regulation establishes ceiling prices for commodities dealt in between July 1, 1949 and June 24, 1950, for modifications of such commodities, for new commodities introduced subsequent to June 24, 1950 and for the services of installation and erection of those commodities. There are also special provisions relating to (a) rounding ceiling prices, (b) retention of ceiling prices established under the General Ceiling Price Regulation where the change is less than 1 percent, (c) reduction of ceiling prices to reflect any increase in the value of scrap or waste material, (d) adjustment of ceiling prices quoted on a delivered basis for increases in transportation costs, and (e) adjustment of ceiling prices for commodities manufactured in more than one of your plants.

SEC. 3. General description of the pricing technique. (a) Your ceiling price to your largest buying class of purchaser for sale of any commodity covered by this regulation is your base period price for the commodity, plus the "labor cost adjustment" and the "materials cost adjustment". Section 45 (Definitions) explains the meaning of your "largest buying class of purchaser". Sections 4 through 9 tell you how to obtain your base period price. Sections 11 through 13 tell you how to calculate the "labor cost adjustment". Sections 14 through 26 tell you how to calculate the "materials cost adjustment". If you do not wish to make either of these calculations, you may use your base period price as your ceiling price to your largest buying class of purchaser. If you wish to calculate only one of the adjustments, you may do so, in which case you will add only the amount of that one adjustment to your base period price.

(b) Your ceiling price for the sale of the commodity to your largest buying class of purchaser must be consistent in every respect with your base period price; that is, it must carry all customary delivery terms, cash, trade and volume discounts, allowances, premiums and extras, deductions, guarantees, servicing terms and other terms and conditions of sale.

(c) Your ceiling price for sale of the commodity to your other classes of purchasers to whom you made sales during your base period is determined by applying your price differentials last used during your base period. In the event you made no base period sales to a particular class of purchaser, you apply your customary differentials in effect during your base period, or if none, then those last in effect before your base period. If you are selling to an entirely new class of purchaser you determine your base period price for that class of purchaser under section 9 of this regulation. For each class of purchasers you must maintain all delivery terms, cash, trade and volume discounts, allowances,

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premiums and extras, deductions, guarantees, servicing terms and other terms and conditions of sale last in effect prior to the end of your base period. An explanation of what is meant by "class of purchaser" is found in section 45 (Definitions).

BASE PERIOD PRICES

SEC. 4. *Base period.* "Base period" refers to the period April 1, through June 24, 1950 or any previous calendar quarter ended not earlier than September 30, 1949, which you may elect to use. Whatever base period you elect must be used for all commodities in the same category. There is an exception in case of a commodity for which you cannot establish a base period price under sections 7, 8 or 9 during the base period you select. In that case, you may use for that commodity any other base period permitted under this section during which you can establish a base period price under the provisions of sections 7, 8 or 9.

SEC. 5. *Category.* "Category" refers to a group of commodities which are normally classed together in your industry for purposes of production, accounting or sales. This is the same definition as used in section 4 (c) of the General Ceiling Price Regulation. You may, however, exclude from any category any commodity or group of related commodities for which the base period you have elected to use for the category is unrepresentative because of special seasonal characteristics of that commodity or group of related commodities. In that case, treat the commodity or related group of commodities as constituting a separate category.

SEC. 6. *How to obtain your base period price.* The following sections 7, 8 and 9 tell you how to establish your base period price. You must use the first of these sections which is applicable to the commodity being priced. You should note in particular that you may use section 9 only in the event that it is impossible for you to obtain a base period price under the provisions of sections 7 or 8 at any time between July 1, 1949 and June 24, 1950. The following provisions of this section must be applied to every base period price.

(a) If your base period price includes any excise, sales, or other similar tax which is not separately stated, you must follow the instructions contained in section 34.

(b) If your base period price is expressed as a list price less discounts, you make the adjustments of the base period price under section 3 (a) upon the basis of the net price to your largest buying class of purchaser.

Example: Your base period "list" price for commodity A is \$12.00 less a 20 percent discount to your largest buying class of purchaser. The "labor cost adjustment" and the "materials cost adjustment" which you are permitted to add to your base period price total \$3.84. You first take 80 percent of \$12.00, thus applying the 20 percent discount. The resulting amount, \$9.60, plus \$3.84 equals \$13.44, your "net" ceiling price to your largest buying class of purchaser. You can figure your "list" ceiling price by dividing your "net" ceiling price (\$13.44) by

the same percentage (80 percent), giving \$16.80. Applying the 20 percent discount to your largest buying class of purchaser gives you \$13.44, or your "net" ceiling price to that class of purchaser.

(c) If, during the base period, you customarily produced the same commodity from two or more manufacturing establishments of your business and sold it at different prices depending upon the place of production, you must obtain a separate base period price and determine a separate ceiling price for each such establishment.

SEC. 7. *Base period prices for commodities offered or delivered during the base period.* This section refers to prices which you established during the base period by delivering or offering to deliver to a buyer a commodity or an erection or installation service. For these commodities and services you establish your base period price by selecting the first of the following prices which is available with respect to the commodity or service you are pricing:

(a) The highest published list price which you had in effect for your sale of the commodity or service during the base period, adjusted to reflect all applicable extra charges, discounts, or other allowances to your largest buying class of purchaser last in effect prior to the end of your base period.

(b) The highest price at which you either contracted to sell the commodity or service during your base period or made a written offer during your base period to sell the commodity or service. However, such a written offer may be used only if it was accepted in writing prior to October 1, 1950. This price must be adjusted to reflect all applicable extra charges and discounts or other allowances to your largest buying class of purchaser last in effect prior to the end of your base period.

(c) The highest price at which you delivered the commodity or service during your base period, adjusted to reflect all applicable extra charges and discounts or other allowances to your largest buying class of purchaser last in effect prior to the end of your base period.

SEC. 8. *Base period prices for modified commodities.* The provisions of this section refer only to a commodity (new and unused) for which you are able to establish a base period price under section 7 and which you have substantially modified subsequent to the end of your base period. (If the modification constitutes only a minor change in design or construction which does not substantially affect unit manufacturing materials cost or materially alter the services given by the commodity, your base period price for the modified commodity shall be the same as your base period price for the commodity before modification.) The increase or decrease in your cost resulting from any substantial change in design, specifications or equipment which you make in such a commodity shall be figured under this section and shall be added to or subtracted from your base period price of the commodity before modification. The resulting figure shall be your base period price

for the modified commodity to your largest buying class of purchasers. The method for computing this change in cost is as follows:

(a) You first figure the increase and decrease in the costs listed in this paragraph (a) which are attributable to the change in design, specifications, or equipment. This change in costs shall be figured by using:

(1) Factory labor cost at straight time labor rates in effect in your plant at the end of your base period for the labor cost added or eliminated. (In this computation you must use the method set forth in section 9 (d)).

(2) Direct material cost determined by using material and parts prices in effect to you at the end of your base period for the materials and parts both added and eliminated. (In this computation you must use the method set forth in section 9 (e)). If you are unable to determine your base period cost for any material in accordance with the provisions of section 9 (h), you must apply the provisions of section 10.)

(3) Your base period cost for subcontracted services, determined under the method set forth in section 9 (f), plus transportation costs which you paid for shipment to you from the subcontractor. These transportation costs must not be in excess of the cost of transportation determined on the basis of the rates in effect at the end of your base period.

(4) Royalty payments, if any, determined at the rate you actually paid.

(5) If you sell the commodity on a freight allowed or a delivered price basis, transportation charges not in excess of those you had in effect at the end of your base period. These charges must be computed on the basis of the practice you had last in effect prior to the end of your base period.

(6) Where you sell the commodity on an installed or erected basis, the increase or decrease in the cost of installation or erection due to the modification of the commodity, figured in accordance with subparagraphs (1), (2), and (3), inclusive, of this paragraph.

(b) You shall then add or subtract the net increase or decrease in cost calculated under the provisions of paragraph (a) to or from your base period price for the commodity before modification.

SEC. 9. *Base period prices computed by formula.* This section is applicable only to a commodity (new and unused) or to an installation or erection service for which you cannot determine the base period price under sections 7 or 8 of this regulation. You determine your base period price for such a commodity or service by using either the price determining method which you last had in effect during your base period, or if you had no price determining method in effect during your base period, by using a price determining method approved by OPS. You use this price determining method to determine a base period price for the commodity or service to your largest buying class of purchasers.

(a) *Price determining method where you had one in effect during your base period.* You shall use the method of determining price by relation to cost that

you last had in effect during your base period for determining the selling prices of commodities or services of the same or a similar type. This means that you must use the overhead rates, machine hour rates, if any, rates for general administrative and selling expenses, profit markup, discounts, and allowances, and any other bases of computing price by relation to cost that were last in use in your plant, or in your field operations, during your base period and are applicable to the commodity or service being priced.

(b) *Price determining method where you had none in effect during your base period.* If you had no method of determining price by relation to cost in effect during your base period for commodities or services of the same or a similar type, you must file a proposed price determining method with the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C., before you deliver any commodity, or furnish any service, which is covered by this section. This price determining method must relate to labor and material costs, shop overhead rates, administrative and selling expenses, other cost factors, and profit margins, insofar as they are applicable, which you had in effect in your plant, or in your field operations, during your base period, for comparable commodities or services. As soon as you decide upon such a price determining method, you shall file a report by registered mail with the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C.

(1) *Report.* This report shall set forth a detailed description of the proposed price determining method; a detailed explanation of all factors included in the proposed price determining method and the manner in which they were determined and are applied; and a representative sample of prices computed in accordance with the proposed price determining method, showing in detail how they were computed.

After receipt of this report, OPS may approve the proposed price determining method, require you to file a revised price determining method, or establish a different price determining method. If the OPS fails to act within thirty days after it receives the required report (or any verification of the facts stated in the report that may be requested), the proposed price determining method shall be deemed to be approved. However, OPS may disapprove this price determining method at any time. Such disapproval will not be retroactive as to any deliveries made before the date of the disapproval. In the event that the OPS finds that your production experience does not yet warrant the establishment of a permanent price determining method, it may either establish, or give temporary approval to, a price determining method and require further filing under this paragraph at a later date.

(2) *Interim pricing.* Prior to receipt of approval by the OPS of the proposed price determining method, or prior to the expiration of the thirty day period after receipt by the OPS of the required re-

port (or of any verification of the facts stated in the report that may be requested), you may quote or charge prices determined in accordance with the proposed price determining method. However, until a price determining method has been established under this paragraph (b) not more than 75 percent of this price may be paid or received.

(c) *Application of price determining method.* You must apply your base period price determining method, or the price determining method approved by the OPS, in accordance with paragraphs (d) to (j), inclusive, of this section 9.

(d) *Direct labor costs—(1) Method of determining base period direct labor costs.* You shall determine direct labor costs by multiplying the straight-time labor rate for each classification of labor last in effect during your base period (see subparagraph (2) of this paragraph) by the estimated number of clock hours of that classification of labor. This estimate of the number of clock hours shall be based on previous production experience. If, during your base period, you used an average rate to determine labor costs, you shall determine labor costs by using the method of computing the average, last in effect during your base period, and labor rates determined in accordance with subparagraph (2).

(2) *Labor rates.* The rates used in determining allowable direct labor costs shall be the rate in your plant, or in your field operations, for each classification of labor that was last prevailing during your base period. If you require the use of labor of a classification not employed by you in your plant or in your field operation during your base period, you shall use as the rate for that classification of labor, the rate last prevailing during your base period in the locality in which the manufacturing, or erection or installation, is to be performed. If labor of that classification was not employed in that locality during your base period, you shall use the rate last prevailing during your base period in the most comparable locality, as accurately as you are able to determine that rate by the use of reasonable diligence.

(3) *Overtime and shift premium.* In calculating a base period price computed by formula, generally you are required to use as elements of the formula only straight-time labor rates. After you have calculated a base period price in this way, you may add an amount for overtime or shift premium, if that will be required to produce the commodity. You may not add overtime or shift premium, however, where the commodity is one which will be sold by you pursuant to a published list price or will be sold by you to a person who will resell the commodity without substantially altering its form.

The amount to be added for overtime or shift premium shall be determined by multiplying the estimated number of overtime or shift premium hours, which you expect will be required to produce the commodity, by the overtime or shift premium rate in your plant, or in your field operations, for each classification of labor that was last prevailing during your base period. If you require the

use of labor of a classification not employed by you in your plant, or in your field operations, during your base period, you shall use as the rate for that classification of labor, the rate last prevailing during your base period in the locality in which the manufacturing, or erection or installation, is to be performed. If labor of that classification was not employed in that locality during your base period, you shall use the rate last prevailing during your base period in the most comparable locality, as accurately as you are able to determine that rate by the use of reasonable diligence.

(e) *Material costs.* You shall determine the allowable cost of purchased raw materials, processed and fabricated materials, and parts or subassemblies as follows: Multiply the base period cost for each material, part or subassembly by the estimated quantity of that material, part or subassembly. This estimate of the quantity of the material, part or subassembly, which is to be used in the production, or installation or erection, of the commodity shall be based upon your previous production experience.

(f) *Subcontracted services.* If, during the base period, you processed a material or produced a part in your own plant, you may not use in your computations any cost for subcontracting of the processing of the material or the making of the part in excess of your base period cost of the processing of the material or the making of the part in your own plant. In all other cases, if you have materials processed or parts made by a subcontractor, you shall use your base period cost for such subcontracted services.

(g) *Expendable tools, etc.* To the extent that your base period price determining method includes, or is based upon, prices paid for expendable tools, dies, jigs, fixtures, moulds, patterns or work-holding devices, you must use your base period cost for such items in calculating your base period price.

(h) *Base period cost.* To determine the base period cost to you for materials, parts, subassemblies, subcontracted services, or expendable tools, dies, jigs, fixtures, moulds, patterns or work-holding devices, you use the first of the following prices available to you. In no event may the price you use be in excess of the ceiling price under the applicable ceiling price regulation. If you use subparagraphs (2), (3) or (4) of this paragraph, you must disregard any price based upon a departure from your normal buying practices. Such a departure would include quantities smaller than those you usually purchase or contract for, or use of a more distant or different class of supplier (other than the United States), or use of subcontracted services in an amount in excess of that used in your base period. For example, you must disregard any price based upon a change in your source of supply from a manufacturer to a reseller or warehouseman or from a domestic to a foreign source of supply. Likewise, you must disregard any price which is based upon a purchase of conversion steel, except as permitted in section 42. If you are unable

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to determine your base period cost in accordance with the methods set forth in subparagraphs (1) to (4), inclusive, you must apply the provisions of section 10.

(1) The exchange quotation for the nearest monthly contract as of the close of business on the last date in your base period (or the nearest preceding date for which such a quotation is available) for any commodity traded regularly upon a commodity exchange operating under the jurisdiction of the Commodity Exchange Authority.

(2) The net price per unit of the material, part, subassembly, or expendable tool, die, jig, fixture, mould, pattern or work-holding device shown on the invoice for the last delivery of the particular commodity or service to you prior to the end of your base period. If, however, the delivery was received more than thirty days prior to the end of your base period or was pursuant to a contract bearing a firm price entered into more than sixty days prior to the end of your base period, you need not use this subparagraph (2). If within thirty days prior to the end of your base period, you received more than one delivery of the same commodity or service, you must use an average cost. You obtain this average cost by dividing the net amount you paid for all deliveries of the commodity or service during the thirty-day period preceding the end of your base period by the total number of units of the commodity or service delivered to you during that period.

(3) The net price per unit of the commodity or service stipulated in the written contract for the commodity or service last prior to the end of your base period, provided that it was entered into not more than sixty days prior thereto.

(4) The net price per unit of the commodity or service stipulated in the written offer for sale of the commodity or service to you made last prior to the end of your base period, provided that the offer was made within sixty days of the end of your base period and that you still have the written offer or obtain a copy of it from the offeror.

(i) *Transportation costs.* If you pay any transportation costs for inbound shipments, you may add these costs to the materials cost or cost of subcontracted services determined by you under (e) and (f). In determining these transportation costs you must use freight rates last in effect during your base period. If during your base period you had in effect a method of averaging transportation costs, you may continue to use that method of averaging transportation costs. The addition of transportation costs is, of course, subject to the limitations in paragraph (h) with respect to obtaining commodities or services from normal sources of supply.

(j) *Purchaser's allowance for scrap or waste.* Where your base period price determining method included an allowance to the purchaser for scrap or waste, generated during the manufacturing process, this allowance shall be determined as follows:

(1) If, during the base period, you determined the amount of this allowance by the current market price, you shall multiply the estimated quantity of

scrap or waste by its last market price during your base period.

(2) If, during the base period, you determined the amount of this allowance by a percentage of the current market price, you shall first multiply the last market price in effect for the scrap or waste during your base period by the percentage of the market price you were using during your base period, and then multiply the result by the estimated quantity of scrap or waste.

Sec. 10. Computation of ceiling price where you are unable to determine your base period cost. This section applies if you are unable to determine your base period cost of any material, part, subassembly, subcontracted service, or expendable tool, die, jig, fixture, mould, pattern or work-holding device, which you use in the production of a commodity for which you must obtain a base period price under sections 8 or 9. This material, part, subassembly, subcontracted service, or expendable tool, die, jig, fixture, mould, pattern or work-holding device will be referred to in this section as the "item". You must apply paragraph (a) of this section if you are using section 8 and you must apply paragraph (b) if you are using section 9.

(a) If you are obtaining a base period price for a modified commodity under section 8:

(1) You compute the increase or decrease in cost attributable to the modification under the applicable provisions of section 8 but you disregard the cost of the "item" in calculating this increase or decrease in costs.

(2) Using the figure you find under subparagraph (1), you complete the calculations required by section 8.

(3) Using the figure you derive under subparagraph (2) as your base period price for the modified commodity, you compute your ceiling price under section 3 (a).

(4) You determine your current cost, not in excess of the applicable ceiling price, for the "item" you disregarded in subparagraph (1).

(5) You add the figures you find under subparagraph (3) and (4). This is your ceiling price for the modified commodity.

(b) If you are obtaining a base period price for a new commodity under section 9:

(1) You compute the base period price of the commodity in accordance with your base period price determining method or your OPS approved price determining method, as the case may be, but you disregard the cost of the "item" in computing your base period price.

(2) Using the figure you derive under subparagraph (1) as your base period price, you compute your ceiling price under section 3 (a).

(3) You determine your current cost, not in excess of the applicable ceiling price, of the "item" you disregarded in the computation under subparagraph (1) and add to this your markup over total costs, less selling and general administrative expense, which is provided in the price determining method you used in subparagraph (1).

(4) You add the totals found under subparagraphs (2) and (3). This is your ceiling price for the new commodity.

HOW TO CALCULATE THE LABOR COST ADJUSTMENT

Sec. 11. General description of how to calculate the "labor cost adjustment." Sections 12 and 13 tell how to calculate the "labor cost adjustment." The calculations under both sections are designed to yield an average percentage increase in your factory labor cost based upon net sales and factory payroll data for your last fiscal year ended not later than December 31, 1950. The percentage is referred to as your "labor cost adjustment factor." Under section 12, the net sales and factory payroll data are for your entire business and the labor cost adjustment factor will be applied uniformly to the base period prices for all of your commodities. Under section 13, the net sales and factory payroll data are for a unit of your business and the labor cost adjustment factor will be applied uniformly to the base period prices of all commodities produced in that unit. If the commodities produced in the several units of your business have experienced significantly different labor cost increases, it will probably be to your advantage to use section 13 so as to reflect these differences more appropriately.

Sec. 12. How to calculate the "labor cost adjustment" upon the basis of your entire business. To calculate the "labor cost adjustment" upon the basis of your entire business, you do the following:

(a) Find the dollar amount of your net sales, and of your factory payroll for your entire business for your last fiscal year ended not later than December 31, 1950. You may not include in factory payroll labor costs which are part of general and administrative expenses, sales and advertising expenses, distribution costs, purchasing costs, cost of major repairs or replacement of plant or equipment, cost of expansion of plant or equipment, or general research not directly applied to current production. You may include in factory payroll, however, such items as—direct labor, factory supervision, factory service labor (including ordinary maintenance of plant or equipment), factory stores labor (including materials control), factory quality control labor (including testing or inspection), painting, packaging, and crating labor, field erection and installation labor, and product engineering and development labor which is directly applied to current production or to current installation or erection.

(b) Divide the dollar amount of your factory payroll found under (a) by the dollar amount of your net sales found under (a). This will show what percentage your factory payroll is of your net sales. This percentage is referred to as your "labor cost ratio."

(c) Find the dollar amount of your factory payroll, as limited in paragraph (a) of this section, for your last payroll period ended not later than the end of your base period (if your base period is April 1 through June 24, 1950, you should use your last payroll period ended not later than June 30, 1950). The term "end of your base period" is explained in section 45 (Definitions). This payroll is referred to as "your base period payroll." Compute what the dollar amount of your base period payroll

would have been upon the basis of your wage rates in effect on March 15, 1951. This is referred to as "your recomputed payroll." You may add to your recomputed payroll a dollar amount to reflect, for the labor covered by that payroll, any increase between the end of your base period and March 15, 1951, in the cost to you of insurance plans, pension contributions for current work, paid vacations and similar "fringe benefits." You may make the calculations called for by this paragraph in whatever appropriate way is best adapted to your accounting records and your basis of wage payments, e.g., hourly rates, piece-work, or any other system of wage payments used by you.

(d) Divide the dollar amount of the difference between your recomputed payroll and your base period payroll by your base period payroll. The resulting percentage is referred to as your "wage increase factor".

(e) Multiply your labor cost ratio derived under (b) by your wage increase factor derived under (d). The resulting percentage is referred to as your "labor cost adjustment factor".

(f) Multiply the base period price of the commodity being priced by your labor cost adjustment factor. The resulting amount is the "labor cost adjustment" to be added to the base period price in accordance with section 3 (a).

(g) If you use this section, it must be used for all of your commodities.

Example:

(1) Your fiscal year is the calendar year. Your net sales for the twelve months ended December 31, 1950, were \$1,000,000. Your factory payroll for the year was \$300,000 (the required exclusions having been made in arriving at this figure).

(2) \$300,000 divided by \$1,000,000 is 30 percent. This is your "labor cost ratio".

(3) Your factory payroll for the week ended June 24, 1950, was \$6,000 (the required exclusions having been made in arriving at this figure). At wage rates in effect March 15, 1951, the payroll would have been \$6,500. In addition, you have also granted longer paid vacations and a more liberal insurance plan which amounts to the equivalent of two and one-half cents per hour. The number of hours covered by your base period payroll was 4,000. Consequently the increased "fringe benefits" add an extra \$100 per week to your factory labor cost for the March 15, 1951, period. This makes your recomputed payroll at March 15, 1951, wage rates \$6,600, or a total increase of \$600.

(4) \$600 divided by \$6,000 is 10 percent. This is your "wage increase factor".

(5) 30 percent multiplied by 10 percent is 3 percent. This is your "labor cost adjustment factor."

(6) If your base period price was \$100, you multiply \$100 by 3 percent, giving \$3, the "labor cost adjustment".

SEC. 13. How to calculate the "labor cost adjustment" upon the basis of a unit of your business. To calculate the "labor cost adjustment" upon the basis of a unit of your business, you do the following:

(a) Find the dollar amount of your net sales, and of your factory payroll for your last fiscal year ended not later than December 31, 1950, relating to a unit of your business for which you regularly maintain separate accounts and in which the commodity being priced is produced. You must include in net sales

the value, as shown on your records, of any transfer of a commodity or material from that unit to another unit of your business. If your records do not show a value you may not use this section. The provisions of section 12 (a) as to what may be included in factory payroll apply.

(b) Using the data found under (a) you make the calculations prescribed in paragraphs (b), (c), (d), (e) and (f) of section 12, for the unit of your business to which the data relate. This will give you the "labor cost adjustment" to be added to the base period price in accordance with section 3 (a).

(c) This section may be used only for commodities produced in the particular unit of your business to which the net sales and factory payroll data relate, and must be used for all commodities produced in that unit.

HOW TO CALCULATE THE MATERIALS COST ADJUSTMENT

SEC. 14. Manufacturing material. You will need to become familiar with the term "manufacturing material" in the following sections. The term "manufacturing material" does not include materials or subcontracted industrial services used in replacing, maintaining or expanding your plant or equipment, or other materials or supplies, the use of which is not directly dependent upon the rate at which you manufacture the commodity being priced or install or erect the commodity. It refers to a material entering directly into the commodity being priced or used directly in the manufacturing processes from which the commodity results, or used directly in the installation or erection of the commodity, together with packaging materials, containers (other than returnable containers), purchased fuel, steam or electric energy, and subcontracted industrial services which are directly related to the manufacture of the commodity, or which are directly related to the installation or erection of the commodity. It also includes the following tools, supplies and materials if they are expended directly in the production of the commodity being priced or in the installation or erection of the commodity:

Binders (such as oil, pitch, paste, etc.).
Chalk.

Core sand and core oil.
Cutting oils and compounds used in processing departments.

Cutting tools (such as drills, saws, reamers and grinding wheels).

Deoxidizing agents (such as aluminum, copper, chromium, beryllium, phosphorus, etc.).

Facings (such as graphite, soap stone, sea-coal, etc.).

Flux.

Laboratory supplies or photographic supplies used for quality control purposes.

Molders sand.

Polishing compounds.

Slushing oil.

Timber.

Welding rods and supplies.

It also includes the following commodities only if they are permitted to be included as expense items for Federal tax purposes:

Core boxes.

Dies.

Foundry flasks.

Jigs or fixtures.

Patterns.

Plate shop and sheet metal holders.

Templates.

SEC. 15. General description of the methods available. (a) There are four alternative methods available to you for calculating the "materials cost adjustment". You should use the one best suited to your particular situation. Only manufacturing materials may be taken into account in your calculations and you will measure their change in cost to you between prescribed dates. You are permitted, however, to omit any manufacturing material which is not significant or whose cost has not decreased between the prescribed dates. This section only contains general descriptions, as an aid to understanding. The exact provisions which are in the following sections are controlling.

(1) *Method 1.* Method 1 allows you to measure the increase in your manufacturing materials costs upon the basis of a unit of your business not larger than a plant, or, if you have only one plant, upon the basis of your entire business. Under this method, which is set forth in section 17, you calculate a percentage increase in your manufacturing materials costs upon the basis of net sales and materials put into production during a yearly accounting period. If you make the calculations upon the basis of your entire business, you apply the percentage increase uniformly to all of your commodities. If the calculations are upon the basis of separate units of your business, you apply the percentage increase for each unit uniformly to all of the commodities produced in that unit. There are specific limitations upon the use of this method where you have had significant substitution of materials.

(2) *Method 2.* Method 2 is for an individual commodity and is based upon the increase in your unit manufacturing materials cost for that commodity. Under this method the "materials cost adjustment" will ordinarily differ for each commodity. You should probably use this method, therefore, if the various commodities you produce have had substantially different material cost increases since the end of your base period, or vary widely from each other in the ratio between unit manufacturing materials cost and sales price. This method, however, is more burdensome because it requires a separate calculation for each commodity.

(3) *Method 3.* Method 3 is for a product line and is based upon the increase in your unit manufacturing materials cost for the best selling commodity in the product line. A percentage figure for this increase is derived which is applied to the base period price of each commodity in the product line. This method may be more appropriate than Method 2 if you have a number of closely related commodities whose material cost increases have been about the same.

(4) *Method 4.* Method 4 may also be used for a product line, or it may be used for a category. It is based upon the increase in the cost of the bill of materials used in producing the goods sold during an accounting period of three months or less. Like Methods 1 and 3 it yields a uniform materials cost ad-

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justment factor for all commodities in the product line or category. If your records are in a form which permits you to use this method, you may find it simpler to apply than Method 1.

(b) You may select whichever one of the four methods you consider best suited to the nature of your business and most adaptable to the records you maintain. If you select the first, third or fourth method, you must use it for each commodity in the particular unit of your business (or for all of your commodities if your calculations are based upon your entire business), product line or category involved.

SEC. 16. Omission of certain manufacturing materials from your calculations. Under any of the four alternative methods which you use for calculating the "materials cost adjustment" you may omit from your calculations any manufacturing material which is not significant or whose cost to you has not decreased between the prescribed dates. Consequently, a reference to "each manufacturing material" under any of the four methods means each such material you are including in your calculations.

SEC. 17. Method 1 (Aggregate method). To calculate the "material cost adjustment" under this method, you do the following:

(a) Find the dollar amount of your net sales for your last fiscal year ended not later than December 31, 1950, for your entire business, or for a unit of your business for which you regularly maintain accounts and in which the commodity being priced is produced. You may not, however, use your entire business for this calculation if you operate more than one plant. Nor may you use a unit of your business which includes the output of more than one plant, although you may use a unit less inclusive than a plant. If you use a unit of your business, you must include in net sales the value of any commodity or material transferred from that unit to another unit of your business. The value shall be that shown in your records. If your records do not show a value, you may not use that unit of your business for making your calculations.

(b) Multiply the physical amount of each manufacturing material which you used during the same fiscal year either in your entire business or in a unit of your business, whichever you are calculating on, by the dollars-and-cents amount of the change in net cost per unit of the material to you between the end of your base period and December 31, 1950. The term "end of your base period" is explained in section 45 (Definitions). For any material listed in Appendix B you may figure the change to March 15, 1951. Before starting to figure the change in net cost per unit of the material, you should read carefully the instructions contained in sections 21 through 26.

(c) Add together the resulting figures derived under (b) which represent increases in net cost. Do the same with the resulting figures which represent decreases in net cost. Subtract the total of the decreases from the total of the increases.

(d) Divide the final figure derived under (c) by the amount of your net sales found under (a). The resulting percentage is referred to as your "materials cost adjustment factor".

(e) Multiply the base period price of the commodity being priced by your materials cost adjustment factor. This will give the "materials cost adjustment" to be added to the base period price in accordance with section 3 (a).

(f) If you use this section and your calculations are based upon your entire business, the materials cost adjustment factor which you derive must be used for all of your commodities. If your calculations are based upon a particular unit of your business, the materials cost adjustment factor which you derive must be used for all commodities produced in that unit and may not be used for commodities produced in any other unit of your business.

(g) You may not use this section if you have replaced, in any significant degree, the materials used by you during the base period with lower-priced substitute materials. (For example, if you are a manufacturer of automotive parts and you are now using a significantly large percentage of steel to replace the copper and brass you used during your base period, you may not use this method.)

SEC. 18. Method 2 (individual commodity method). To calculate the "materials cost adjustment" under this method, you do the following:

(a) Find the physical amount of each manufacturing material which you normally used in the base period per unit of the commodity being priced.

(b) Multiply this physical amount of each of these manufacturing materials by the change in its net cost per unit to you between (1) the last day of the base period you elected for the commodity being priced and (2) December 31, 1950. For any material listed in Appendix B you may figure the change to March 15, 1951. Before starting to figure the change in net cost, you should read carefully the instructions contained in sections 21 through 26.

(c) Add together the resulting figures derived under (b) which represent increases in net cost. Do the same with the resulting figures which represent decreases in net cost. The difference between these totals is the "materials cost adjustment" to be added to the base period price in accordance with section 3 (a).

Example: The commodity you are pricing uses three different manufacturing materials. For each unit of the commodity, you require 5 pounds of material A, 10 pounds of material B, and 1 pound of material C. Before the end of your base period material A cost you \$1.00 per pound, material B \$2.00 per pound and material C \$0.50 per pound. Your net cost per unit of material A on your last invoice before December 31, 1950, was \$1.50 and for material B it was still \$2.00. Material C is listed in Appendix B; your last invoice prior to March 15, 1951, was \$1.00 per pound. Your increase for material A was, therefore, 5 multiplied by 50 cents (the difference between \$1.50 and \$1.00) or \$2.50. Material B has not changed in price and may, therefore, be omitted. For material C, 1 pound multiplied by 50 cents equals 50 cents. In addition, the commodity was heat

treated for you by an outside contractor at a cost of \$1.00 per unit before the end of your base period and the price for this service as of March 15, 1951, was \$1.25, a difference of 25 cents. Your materials cost increase for the commodity is, therefore, \$2.50 for material A, 50 cents for material C, and 25 cents for the heat treating service, or a total of \$3.25. This is the "materials cost adjustment".

SEC. 19. Method 3 (product line method using best selling commodity). This method is essentially the same as Method 2 except that the calculations are made for the best selling commodity in a product line. To calculate the "materials cost adjustment" under this method, you do the following:

(a) Select the best selling commodity in the product line of which the commodity being priced is a part.

(1) "Product line" refers to a group of closely related commodities which differ in such respects as model, size or brand name and which are normally classed together as a product line in your industry. Generally speaking, each commodity in the same product line must serve the same purpose and must be made by the same manufacturing process from substantially the same materials. A product line may never be broader than a category and usually will be narrower. The relationship between the commodities will normally be substantially closer in a product line than in a category. For example, milling machines, lathes and screw machines are separate product lines, but a single category of machine tools.

(2) The "best selling commodity" refers to the commodity in a product line which accounted for the greatest dollar volume of sales in the product line in your base period.

(b) Using the best selling commodity, make the calculations prescribed in section 18. This will give the "materials cost adjustment" for the best selling commodity, i. e., the amount to be added to its base period price.

(c) Divide the "materials cost adjustment" by the base period price of the best selling commodity. The resulting percentage is referred to as your "materials cost adjustment factor".

(d) Apply your materials cost adjustment factor to the base period price of each commodity in the product line. The resulting figure for each commodity is the "materials cost adjustment" to be added to the base period price of that commodity in accordance with section 3 (a).

(e) If you use this section it must be used for each commodity in the product line for which you have made your calculations.

Example: You have three commodities in a product line, whose base period prices were \$8, \$10 and \$12, respectively. The best selling item was the \$10 commodity. The "materials cost adjustment" for that commodity calculated under section 18 was \$2, or 20%. The "materials cost adjustment" for the \$8 commodity is, therefore, 20% of \$8, or \$1.60, and for the \$12 commodity, 20% of \$12, or \$2.40.

SEC. 20. Method 4 (composite bill of materials method). Under this method you make your calculations for the increase in your manufacturing materials cost for a product line or a category. To

calculate the "materials cost adjustment" under this method, you do the following:

(a) Find the total net sales of all commodities in the product line or category for your last complete accounting period of three months or less ended not later than the last day of your base period (or if your base period is April 1 through June 24, 1950, ended not later than June 30, 1950). You must include in net sales the value, as shown in your records, of any transfer of a commodity in that product line or category to another unit of your business. If your records do not show a value, you may not use this section for that product line or category.

(b) Find the total physical amount of each manufacturing material used in producing the commodities in that product line or category sold in that accounting period. (Note that, in contrast to Method 1, you find here the physical bill of materials used in producing the goods sold in a short accounting period; while, under Method 1, you find the aggregate quantities of materials used, i. e., put into the production process, in an annual accounting period.)

(c) Multiply this total physical amount by the dollars-and-cents change, between (1) the end of your base period and (2) December 31, 1950, in net cost to you per unit of the material used. For any material listed in Appendix B you may figure the change to March 15, 1951. Add together the resulting figures which represent increases in net cost. Do the same with the resulting figures which represent decreases in the net cost. The difference between these totals is your increase in manufacturing materials cost. Before starting to figure the change in net cost you should read carefully the instructions contained in sections 21 through 26.

(d) Divide your increase in manufacturing materials cost derived under (c) by the amount of your net sales found under (a). This percentage is referred to as your "materials cost adjustment factor."

(e) Apply your materials cost adjustment factor derived under (d) to the base period price of the commodity being priced. The resulting figure is the "materials cost adjustment" to be added to the base period price in accordance with section 3 (a).

(f) You may use this section only if you use it for each commodity included in the product line or category.

SPECIAL INSTRUCTIONS TO BE FOLLOWED IN CALCULATING THE MATERIALS COST ADJUSTMENT

SEC. 21. General nature of these instructions. Section 22 will apply to your calculations irrespective of which of the four alternative methods you use. Sections 23 through 26 may be applicable to you depending upon whether you are covered by certain described situations which are briefly indicated by the section headings and opening sentence of the section.

SEC. 22. How to compute the net cost to you of a manufacturing material as of a prescribed date. Under any of the four

alternative methods you may use for calculating the "materials cost adjustment," you must figure the change, between prescribed dates, in the net cost to you per unit of each manufacturing material included in your calculations. (The earlier "prescribed date" is June 24, 1950, or another date depending on the base period you elected. The later "prescribed date" is December 31, 1950, or March 15, 1951.) To determine the net cost to you per unit of a manufacturing material as of a prescribed date, you use the first of the following prices available to you. In no event may the price you use be in excess of the ceiling price under a ceiling price regulation in effect on the date of issuance of this regulation. If you use paragraphs (c), (d) or (e) of this section, you must disregard any price based upon a departure from your normal buying practices. Such a departure would include quantities smaller than those you usually purchase or contract for, or use of a more distant or different class of supplier (other than the United States) or use of subcontracted industrial services in an amount in excess of that used in your base period. For example, you must disregard any price based upon a change in your source of supply from a manufacturer to a reseller or warehouseman or from a domestic to a foreign source of supply. Likewise you must disregard any price which is based upon a purchase of conversion steel, except as permitted in section 42.

(a) The exchange quotation for the nearest monthly contract as of the close of business on the prescribed date (or the nearest preceding date for which such a quotation is available) for any commodity traded regularly upon a commodity exchange operating under the jurisdiction of the Commodity Exchange Authority and you must use the quotation for both of the prescribed dates. Also, you must use the same commodity exchange for both of the prescribed dates. If the commodity is one which is not itself quoted on such an exchange but another grade of that commodity is so quoted, you may use the exchange quotation for such other grade provided you do so for both of the prescribed dates.

(b) The net price per unit of the material shown on the invoice for the last delivery of the material to you prior to the prescribed date. If, however, the delivery was received more than 30 days prior to the prescribed date or was pursuant to a contract bearing a firm price entered into more than 60 days prior to the prescribed date, you may not use this paragraph (b). If within 30 days prior to each of the applicable prescribed dates, you received more than one delivery of the same manufacturing material, you must use an average price for each such date. You obtain this average price by dividing the net amount you paid for all deliveries of the material during each of the 30-day periods by the total number of units of the material delivered to you during each period. The average price for each period is the price you use for each of the respective prescribed dates.

(c) The net price per unit of the material stipulated in the written contract

for the material which you entered into last prior to the prescribed date, provided that it was entered into not more than 60 days prior thereto.

(d) The net price per unit of the material stipulated in the written offer for sale of the material to you made last prior to the prescribed date provided that the offer was made within 60 days prior to the prescribed date and that you still have the written offer or obtain a copy of it from the offeror.

(e) If none of the foregoing is available to you for one or both of the applicable prescribed dates, you may apply to the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C., for an appropriate increase in the cost of the manufacturing material for use in your calculations. If you make such an application, you must refer specifically to this paragraph; you must describe the commodity being priced and the manufacturing material; you must propose the amount of increase per unit of the manufacturing material you consider appropriate based upon what you would have paid for the material if you had purchased it on each of the applicable prescribed dates, you must set forth in detail supporting reasons and why this paragraph is applicable; and you must state the base period price of the commodity and the ceiling price you propose. You must file this application before using the increase you propose. Although you need not await a reply from the Director of Price Stabilization before using the increase you propose, he may at any time disapprove the increase you propose, stipulate the amount of increase which he will approve or request additional information.

SEC. 23. How to compute net cost as of the applicable prescribed dates where you are using a substitute material not used during the base period. In the case of a substitute material not used by you during the base period (or used in lesser quantities or proportions) in the manufacture of the commodity being priced, you must, if you are using Methods 2, 3 or 4 for calculating the "materials cost adjustment," compute the net cost to you as of the end of your base period of the physical amounts of the materials normally used by you in your base period and the net cost to you as of December 31, 1950, or March 15, 1951, whichever date is applicable, of the physical amounts of the materials normally used by you now. Since this calculation cannot be made accurately under Method 1 (section 17), you may not use that method for any unit of your business in which you are now using significant quantities of a substitute material whose current unit cost is lower than the current unit cost of the material used by you during the base period. However, if the current unit cost of the substitute material is the same or higher than the current unit cost of the material used by you during the base period, you may use Method 1 but without making any allowance for the higher cost of the substitute material.

SEC. 24. Inclusion of transportation costs in the computation of net cost of a manufacturing material as of a pre-

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scribed date. If a quotation, invoice, contract or written offer which you use under section 22 did not include transportation costs for delivery of the material to you, you may add the actual amount of the transportation costs which you paid or would have paid for delivery of the material to you, provided that you include them in your determination of the net price of the material as of both dates.

SEC. 25. How to calculate the "materials cost adjustment" for joint products or by-products. This section will concern you only if you manufacture joint products or by-products. If two or more commodities result from the same manufacturing operation or from common materials and you are unable to compute the unit manufacturing materials costs for each under section 18, you calculate the "materials cost adjustment" for each as follows:

(a) Establish an appropriate combined unit of production in which are represented the several commodities in the proportions in which they result from the same manufacturing operation or from common materials.

(b) Find the dollar value of the combined unit of production using base period prices for each commodity, determined in accordance with sections 7, 8 or 9, as the case may be.

(c) Using the same calculations as in section 18 (substituting, of course, the combined unit of production for the unit referred to therein), compute the increase in manufacturing materials cost per combined unit of production.

(d) Divide the increase in manufacturing materials cost per combined unit of production by the dollar value of that unit as determined under (b) above.

(e) Apply this percentage to the base period price of each of the commodities being priced. The resulting figure for each commodity is the "materials cost adjustment" to be added to the base period price in accordance with section 3 (a).

SEC. 26. How to calculate the change in net cost of a manufacturing material which is produced in one unit of your business and transferred to another unit of your business. (a) You will be concerned with this section if you are a multiunit organization and in your operations you transfer products for further processing or assembly between units of your business for which you regularly maintain separate records. By way of illustration, such transfers may be between departments, plants, branches or divisions. This section deals specifically with a manufacturing material which you produce in one unit of your business and transfer to another unit of your business where it is used in producing the commodity being priced. Such a manufacturing material (which is referred to as a "transferred material") may also be sold to another person. This section provides three methods for figuring the change in cost of a transferred material in your calculations of the "materials cost adjustment" for the commodity being priced. The method you use depends first on how you calculated the "labor cost adjustment" for the commodity be-

ing priced and second, on whether you also sell the transferred material to other persons.

(b) If you calculated the "labor cost adjustment" for the commodity being priced upon the basis of your entire business or of a unit of your business that included the unit in which the transferred material is produced, you may not in calculating the change in cost of that material include any increase in your factory labor cost. Your calculation of the change in cost of the transferred material will therefore only take into account changes in the costs of the manufacturing materials directly related to the transferred material. Such change in cost of the transferred material will be included in your calculation of the "material cost adjustment" for the commodity being priced.

(c) If your calculation of the "labor cost adjustment" for the commodity being priced was not based upon your entire business or upon a unit of your business that included the unit in which the transferred material is produced and if the transferred material is one you sell to other persons, you calculate its change in cost as follows:

(1) Find its base period price (i. e., to your largest buying class of purchaser).

(2) Find its ceiling price under this regulation or other applicable regulation to your largest buying class of purchaser.

(3) The difference between the figure found under (2) and that found under (1) is the increase or decrease in the cost of the transferred material which you use in calculating the "materials cost adjustment" for the commodity being priced.

(d) If your calculation of the "labor cost adjustment" for the commodity being priced was not based upon your entire business or upon a unit of your business that included the unit in which the transferred material is produced, and if that material is not one you sell to other persons, you calculate its change in cost as follows:

(1) Find the value as shown in your records at which the transferred material was transferred, last prior to the end of your base period (i. e., the base period for the commodity being priced), to the unit of your business in which the commodity being priced is produced.

(2) Using that transfer price as your base period price, determine what the ceiling price would be under this regulation or other applicable regulation.

(3) The difference between the figure found under (2) and that found under (1) is the increase or decrease in cost of the material to be used in calculating the "materials cost adjustment" for the commodity being priced.

Example: You are pricing a motor for which you produce the wire. The following paragraph illustrates the application of the three methods prescribed in section 26:

(a) You have treated the department in which the motor is produced and the department in which the wire is produced as a single unit in computing the "labor cost adjustment" for the motor. You purchase on the outside the copper and insulating materials used in producing the wire. The "material cost adjustment" for the wire may include, as far as the wire is concerned, only

the change in cost of the purchased copper and insulating materials.

(b) In calculating the "labor cost adjustment" for the motor you used only the department in which the motor is produced. You also sell the wire to others and calculated the "labor cost adjustment" for the wire upon the basis of the wire department. Therefore, in calculating the "materials cost adjustment" for the motor, the change in cost of the wire will be the difference between your ceiling price for the wire under this regulation to your largest buying class of purchaser, and your base period price for the wire to that class of purchaser.

(c) Assume the same facts as in (b) except that you produce the wire exclusively for your own use. You must compute what the ceiling price for the wire would be under this regulation, using the value at which the transfer between departments was made on your books last prior to the end of the base period. The difference between your computed ceiling price and your base period transfer value is the amount you use in calculating the "materials cost adjustment" for the motor.

SPECIAL PROVISIONS RELATING TO CEILING PRICES

SEC. 27. General nature of these provisions. Sections 28 through 32 relate to adjustments of your ceiling prices under certain circumstances. Section 28 relates to rounding ceiling prices. Section 29 relates to retention of ceiling prices established under the General Ceiling Price Regulation where the change in price is less than 1 percent. Section 30 requires that you reduce your ceiling prices to reflect any increase in the value of scrap or waste material generated in your manufacturing processes. Section 31 permits you to adjust your ceiling prices quoted on a delivered basis for certain increases in transportation costs. Section 32 provides an optional method for adjusting your ceiling prices for commodities manufactured in more than one of your plants.

SEC. 28. Rounding ceiling prices. You may round your ceiling prices determined under this regulation so that they will be expressed in the nearest cents or fraction of a cent you normally employ. If you elect to do so you must similarly round the ceiling prices for all your commodities normally priced by you upon the same basis, to reflect decreases as well as increases. In no event may the increase be greater than 1% of your ceiling price prior to rounding. For example, if you normally quote to the nearest quarter of a cent and your ceiling price for commodity A is 21.20 cents, you may round that ceiling price to 21 $\frac{1}{4}$ cents. However, if you round your ceiling price for commodity A and your ceiling price for commodity B is 27.30 cents you must round its ceiling price to 27 $\frac{1}{4}$ cents.

SEC. 29. Retention of GCPR ceiling price where the change in price is less than 1 percent: If your ceiling price for a commodity as determined under section 3 differs by less than 1 percent from that under the General Ceiling Price Regulation, you may continue to use your GCPR ceiling price. However, you may use this section only if you apply it to all your ceiling prices determined under section 3 differing by less than 1 percent from the GCPR ceiling prices, regardless of whether decreases or in-

creases result. For example, your GCPR ceiling price for commodity A is \$10 and your ceiling price under section 3 is \$9.95. Your GCPR ceiling price for commodity B is \$8 and your ceiling price under section 3 is \$8.05. You may continue to use \$10 as your ceiling price for Commodity A, but if you do so you must continue to use \$8 as your ceiling price for commodity B.

SEC. 30. Requirement for reduction of your ceiling prices as otherwise determined for any increase in value of scrap or waste material. (a) You will be concerned with this section if in the manufacturing process relating to the commodity being priced you generate any scrap or waste material which you will sell to other persons or which is transferred from one unit of your business to another, and if, between the end of your base period and March 15, 1951, there has been an increase in the value of such scrap or waste material. However, you need not make the adjustment called for in this section unless your sales of scrap or waste material are significant. They will be considered significant if, for the plant or other unit of your business in which the commodity being priced is produced, the value of your sales or transfers of scrap or waste material exceeded 3 percent of the total value of your sales or transfers of all commodities, during your most recent fiscal year ended not later than December 31, 1950.

(b) In the circumstances described in paragraph (a) where your sales of scrap or waste material are significant you must make an appropriate reduction in the ceiling prices for each of the commodities resulting from your manufacturing process to reflect the dollars-and-cents amount by which the value of the scrap or waste material generated in the manufacturing process has increased between the end of your base period and March 15, 1951. In calculating this increase in value you should use a method comparable to the one you employed for your calculation of the "materials cost adjustment" for the commodity being priced. For instance, if you used Method 2 (section 18) you should calculate the increase in value of your scrap or waste material per unit of the commodity being priced; if you used Method 1 (section 17) you should calculate the increase in value of your scrap or waste material by an aggregate method. The resulting dollars-and-cents amount reflecting the increase in value of your scrap or waste material per unit must be subtracted from your ceiling price as otherwise determined under this regulation.

SEC. 31. Adjustment of ceiling prices quoted on a delivered basis for increases in transportation costs. If your base period price was, and therefore your ceiling price is, a delivered price, you may adjust your ceiling price to reflect any increase, between the end of your base period and March 15, 1951, in transportation costs incurred by you (not including warehousing charges). You may include in this adjustment only increases resulting from transportation charges paid by you to other persons (excluding any person who is an employee,

subsidiary or affiliate of yours or of whom you are a subsidiary or affiliate). This adjustment is made in the following manner:

(a) Where your base period price for the commodity being priced included full transportation costs from point of shipment to point of delivery, you may adjust your ceiling price by the exact amount of the increase in transportation rates to you between such points, charged by the same carrier or class of carrier for the same class of transportation. You may not include any increase due to changing the class of carrier (e. g., from water or highway to rail) or to changing your customary method or quantity of shipment.

(b) Where your base period price was uniform within defined geographical zones but you maintained an established differential between each zone, you may calculate a transportation cost increase adjustment to be applied to the ceiling price for sales to each zone. This calculation is made in the following manner:

(1) Find the average transportation charge paid by you for deliveries of the commodity being priced to each zone during your last accounting period of not less than three months, ended not later than the end of your base period. If your base period is April 1 through June 24, 1950, you should use your last accounting period of not less than three months, ended not later than June 30, 1950.

(2) Find what the average transportation charge paid by you for deliveries of that commodity to each zone would be, using the transportation rates actually in effect on March 15, 1951.

(3) The dollars-and-cents amount of the difference between the average transportation charge found under (2) and that found under (1) for each zone may be added to your ceiling price for sales to that zone.

(c) Where your base period price was uniform for all sales of the commodity being priced to any destination within the United States, you may calculate a single transportation cost increase adjustment to be applied to the ceiling price for all sales within the United States in the same manner as under paragraph (b) of this section, treating the United States as a single zone.

SEC. 32. Optional method for determining a uniform ceiling price for a commodity manufactured in more than one plant. If the commodity being priced is manufactured in more than one of your plants and is customarily sold by you at a uniform price, but in adjusting the base period price for each plant different ceiling prices result, you may compute a uniform ceiling price. To do this, you first determine the ceiling price for each plant and multiply it by the number of units of the commodity sold from that plant during the last quarter of 1950. You then divide the total dollar amount of such sales from all plants by the total number of units sold from all plants. The resulting figure is your uniform ceiling price for the commodity. If sales from any of your plants in the last quarter of 1950 were not substantial, you may use the last three consecu-

tive months of substantial sales in 1950, provided that you use the same period for all of your plants.

Example: You are producing the same commodity in two plants, and customarily charge the same price from each. However, due to a difference in your wage rate changes, your ceiling price for plant A is \$2.00, and for plant B is \$2.10. Sales during the last quarter of 1950 were 1500 units from plant A and 1000 units from plant B. 1500 multiplied by \$2.00 is \$3000; 1000 multiplied by \$2.10 is \$2100; 1500 plus 1000 is 2500; \$3000 plus \$2100 is \$5100; \$5100 divided by 2500 is \$2.04. You may therefore use the uniform ceiling price of \$2.04 for sales from both plants.

MISCELLANEOUS PROVISIONS

SEC. 33. Export sales. Your sales for export are subject to the provisions of this regulation.

SEC. 34. Excise, sales and other similar taxes—(a) Where the tax is included in your base period price. If your base period price for a commodity you are using to determine your ceiling price either for that commodity or another commodity includes any excise, sales or other similar tax which is not separately stated, you must first ascertain the amount of any such tax and exclude it from your base period price. Your base period price, with any such tax so excluded, may then be used in making any appropriate computations for determining your ceiling price. After completing the computations, you may then add on the appropriate amount of any such tax for inclusion as part of your ceiling price. In the case of any increase in such a tax subsequent to the end of your base period, you may include the appropriate amount of any such increase as part of your ceiling price. Likewise, in the case of any similar tax first imposed subsequent to the end of your base period and included in your selling price thereafter, you may include the appropriate amount of such tax as part of your ceiling price.

(b) Where the tax is separately stated and collected. In addition to your ceiling price determined under this regulation, you may collect the amount of any excise, sales or other similar tax paid by you as such only if it has been your practice to state and collect such taxes separately from your selling price for the same or similar commodities. In the case of such a tax imposed by law which is not effective until after the effective date of this regulation, or of any increase in such a tax subsequent to the effective date of this regulation, you may collect the amount of the tax actually paid as such by you, if not prohibited by the tax law. You must in all such cases state separately the amount of the tax.

SEC. 35. Prohibition against redetermination of ceiling prices. Once you have reported your ceiling price or proposed ceiling price for a commodity as required by this regulation, you may not thereafter redetermine it. A purely arithmetical error may, however, be corrected, but the correction must be reported to the Director of Price Stabilization.

SEC. 36. Modification of ceiling prices by the Director of Price Stabilization.

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The Director of Price Stabilization may at any time disapprove or revise downward ceiling prices proposed to be used or being used under this regulation so as to bring them into line with the level of ceiling prices otherwise established by this regulation. Such downward revisions may, of course, be accompanied by upward revisions—as in a case where the Director of Price Stabilization requires an apportionment of the "materials cost increase" for a unit of your business to avoid any inequities resulting from the application of sections 17 or 20.

SEC. 37. Recalculation of ceiling prices and announcement of "materials cost increase factors". The Director of Price Stabilization expects in due course to issue an amendment to this regulation providing for a recalculation of your ceiling prices hereunder. The primary purpose of this recalculation would be to reflect more accurately the materials prices established by this and other ceiling price regulations. The Director of Price Stabilization may also from time to time announce "materials cost increase factors" for certain materials in order to provide greater uniformity in the calculation of their change in price since the end of your base period. These factors will be percentage figures based on studies of some categories of important basic materials and parts. If such a factor is announced, it must be used in place of any change you have had in the price of the material covered by the factor, regardless of whether the factor is higher or lower. These "materials cost increase factors" may be announced by amendments or by supplementary regulations to this regulation.

SEC. 38. Adjustable pricing. Nothing in this regulation shall be construed to prohibit your making a contract or offer to sell a commodity at (a) the ceiling price in effect at the time of delivery or (b) the lower of a fixed price or the ceiling price in effect at the time of delivery. You may not, however, deliver or agree to deliver a commodity at a price to be adjusted upward in accordance with any increase in a ceiling price after delivery.

SEC. 39. Petitions for amendment. If you wish to have this regulation amended, you may file a petition for amendment in accordance with the provisions of Price Procedural Regulation 1 (15 F. R. 9055).

SEC. 40. Supplementary regulations. The Director of Price Stabilization may issue supplementary regulations modifying or implementing this regulation as he deems appropriate.

SEC. 41. Adjustment of ceiling prices where over-all loss in operations results. (a) This section permits you to apply for an upward adjustment of your ceiling prices established by this regulation, if as a result of these ceiling prices, you would operate at a loss.

(b) You may apply under this section if:

(1) Your total manufacturing operations have been conducted at a net loss for a period of operation under this regulation of at least one month, or would have been conducted at a loss if you had

manufactured the commodities covered by this regulation in your customary quantities and proportions;

(2) The loss was attributable to the level of prices established by this regulation, and not to any of the following:

(i) Seasonal, non-recurring or temporary factors affecting your operations; or

(ii) A reduction in volume of production below the normal economical capacity of your plant; or

(iii) The payment of unlawful wages or excessive salaries or of unlawful or excessive prices for materials; or

(iv) The incurring of factory overhead costs or of selling, administrative and general costs which are abnormally high relative to sales or other costs unless such excess is demonstrated by clear and convincing evidence to have been unavoidable in the exercise of sound business judgment and management; or

(v) Any transactions with affiliated corporations or businesses which either are of a kind which would not result from arm's-length bargaining or differ from the transactions which you have customarily had with such affiliated corporations or businesses; or

(vi) Reserves for contingencies.

(3) The adjusted prices for which you apply will not be substantially out-of-line with the ceiling prices for similar commodities established for other sellers under this regulation.

(c) If you make application under this section, you must supply:

(1) Your name, address, a description of your manufacturing facilities and of the commodities you manufacture, and a statement of the principal types of customers to whom you sell;

(2) A detailed annual profit and loss statement for your firm for the years 1946 through 1949, and both an annual profit and loss statement, and if you regularly prepare them, quarterly profit and loss statements covering the year 1950 and each quarter since then;

(3) A detailed profit and loss statement covering a period of operations of one month or more under this regulation, together with a careful explanation of how it was prepared, including particularly a justification of any estimating procedures used in its preparation;

(4) For commodities covered by this regulation, either (i) a statement of your base period and ceiling prices to your largest buying class of purchaser (including delivery terms, cash, trade and volume discounts, allowances, premiums and extras, deductions, guarantees, servicing terms and other terms and conditions of sale) and a schedule of your price differentials to your other classes of purchasers; or (ii) a copy of the report required and submitted to the Office of Price Stabilization; together with (iii) a statement of the section or sections under which you establish your ceiling prices.

(5) A showing that the loss in your current operations was not due to any of the six factors in paragraph (b) (2) of this section.

(6) A list of your principal competitors, and a statement of their ceiling prices under this regulation for commodities similar to yours, together with

data showing the past relationship of your prices to those they have charged for the same or similar commodities.

(7) A proposed schedule of adjusted ceiling prices for commodities covered by this regulation, and a demonstration that, if these prices were charged, your operations would be at a break-even position.

(8) The application must refer specifically to this section of the regulation, must be signed by a responsible officer of your company, and must be sent to the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C.

(d) Within thirty days of the receipt of your application, the Director of Price Stabilization will grant or deny your application in full or in part, or request further information. The Director of Price Stabilization may, as a condition of granting your application in full or in part, require you to submit reports of subsequent operations and may revoke or modify the adjustment at any time. If, thirty days after the acknowledgement or receipt of your application (or of any additional information that may have been requested), none of the actions listed above has been taken, you may sell at your proposed ceiling prices until such time as the Director of Price Stabilization shall notify you that these prices have been disapproved.

SEC. 42. Use of "conversion steel" in calculating the "materials cost adjustment"—(a) Purpose of this section. In calculating the "materials cost adjustment" for a commodity under this regulation, you are not permitted to reflect in your calculations any increase in materials cost occasioned by use of so-called "conversion steel". However, if you believe that this requirement imposes upon you a serious inequity because you are required by NPA Order M-47 (16 F. R. 3130) of the National Production Authority to use more conversion steel than you used in your base period, you may apply for permission to reflect such increase in your calculation of the "materials cost adjustment".

(b) How to apply. Under the circumstances described above, you may make application, signed by a responsible officer of your company, and sent by registered mail, to the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C., referring specifically to this section and supplying the following information:

(1) A statement describing the nature of your manufacturing operations, and particularly the commodities in which conversion steel is used.

(2) A detailed statement showing all of your purchases of steel (whether conversion steel or not) in your base period, and in the three months ended March 31, 1951, listing, for each such purchase, the date, the name and address of the supplier, the exact specifications of the steel purchased, the price paid (including all discounts, extras, terms, delivery charges, etc.), and the amount purchased.

If you sold any steel in either of these periods, you must give full details as to such sales.

(3) A detailed statement establishing the amount of "conversion steel" you are required to use under NPA Order M-47 of the National Production Authority.

(4) A detailed statement showing how you propose to reflect in your calculation of the "materials cost adjustment" the increase, since the end of your base period, in the cost of steel (including conversion steel), in the amount and to the extent that you are required to use such steel under NPA Order M-47 of the National Production Authority.

(c) *Action on your application.* Within thirty days after the receipt of the application described above, the Director of Price Stabilization will grant or deny, in whole or in part, your application, or notify you that further information is required. If, at the end of thirty days, the Director of Price Stabilization has done none of the above, you may begin to sell at ceiling prices calculated in accordance with the "materials cost adjustment" you propose. (In the meantime you may, after the effective date of this regulation, sell at a ceiling price calculated without reference to your use of conversion steel.) At any time thereafter, the Director of Price Stabilization may notify you that further information is required or may deny your application, in whole or in part, but such denial shall not be retroactive as to deliveries previously made.

SEC. 43. Temporary adjustments to carry out existing contracts.—(a) *Who may apply for adjustment.* If at any time prior to the issuance date of this regulation, you entered into a bona fide contract for delivery of a commodity at a firm price subsequent to the effective date of this regulation, and if your ceiling price as determined under this regulation is lower than the contract price, you may apply to the Director of Price Stabilization for an adjustment of your ceiling price, provided:

(1) The contract for future delivery was required by seasonal demands or normal business practices.

(2) The contract, if entered into subsequent to January 26, 1951, called for deliveries at a price which was lawful under ceiling price regulations in effect at that time.

(3) You acquired needed raw materials or component parts after the date of the contract at lawful prices in reliance upon and in order to fulfill the terms of the contract.

(b) *Calculation of the amount of the adjustment.* The adjusted ceiling price will be fixed in the following way:

(1) Take the total price of the quantity of raw materials or component parts acquired in reliance upon, and necessary in order to fulfill, the contract.

(2) Compute what the total price of the same quantity of raw materials or component parts would be as of the later of the two applicable prescribed dates used for your calculation of the "materials cost adjustment". In computing what the total price would be, you will, of course, apply the provisions of section 22.

(3) Subtract the figure arrived at in subparagraph (2) from the figure in subparagraph (1). The result is the total amount of the adjustment. If the figure

arrived at in subparagraph (1) is no higher than that arrived at in subparagraph (2), you cannot apply for adjustment under this section.

(4) Divide the total amount of the adjustment by the number of units of the commodity called for by the contract. This gives you the adjustment per unit of the commodity. If the contract calls for the delivery of more than one commodity, the total amount of the adjustment may be distributed in any appropriate way among the several commodities.

(5) Add the adjustment per unit of the commodity under (4) to your ceiling price for that commodity. The result is your adjusted ceiling price. In no event, however, may you obtain an adjusted ceiling price higher than the contract price.

Example: You contracted in January, 1951, to supply a mail order house 1,000 units of a commodity at \$10.00 per unit, delivery to be made during the months of June, July, and August of 1951. Your ceiling price under this regulation is \$9.00. In order to comply with the terms of your contract, you purchased raw material sufficient to produce 600 units at a total cost of \$4,200. The cost of acquiring the same raw material as of December 31, 1950 (the later of the two applicable dates used in your calculation of the "materials cost adjustment") would be \$3500. The total adjustment is \$700 (\$4200 minus \$3500 equals \$700). The total number of units called for in the contract was 1000. Divide \$700 by 1000. This gives you 70 cents. The adjustment per commodity becomes 70 cents and your adjusted ceiling price for the contract \$9.70. Subsequent sales to the contract purchaser and all sales to other purchasers must be at the regular ceiling price of \$9.00.

(c) *What your application must contain.* Applications for adjustment under this section must be filed on or before August 1, 1951, with the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C. Attached to the application should be the following:

(1) A copy of the contract;

(2) Copies of invoices covering the raw materials or component-parts acquired in reliance upon and in order to fulfill the contract;

(3) Copies of invoices or other supporting data which indicate your net cost as of the later of the two applicable dates you used in computing the "materials cost adjustment".

(4) A copy of the work sheets used in the calculation of your ceiling price.

(5) A report of your adjusted ceiling price and a detailed calculation showing how this price was determined.

(d) *Action on your application.* You may not receive payment of any amount in excess of your ceiling price until 30 days after receipt by the Office of Price Stabilization of any application filed under this section. If the Director of Price Stabilization does not revise or modify the adjusted ceiling price reported by you or notify you that further information is requested, you may after these 30 days have elapsed receive payment at the adjusted ceiling price for all deliveries made since the date of filing, or modify the adjusted ceiling price, but such revision or modification will not apply to deliveries already made.

SEC. 44. Records and reports—(a) Record-keeping requirements. (1) With respect to any commodity covered by this regulation the provisions of section 16 of the General Ceiling Price Regulation are hereby continued in effect insofar as they apply to the preparation and preservation of "base period records" and such "current records" as have been made as a result of sales between January 26, 1951, and the effective date of this regulation.¹

Sec. 16. (a) Base period records. (1) You must preserve and keep available for examination by the Director of Price Stabilization those records in your possession showing the prices charged by you for the commodities or services which you delivered or offered to deliver during the base period * * *

(2) In addition, on or before March 22, 1951, you must prepare and preserve a statement showing the categories of commodities in which you made deliveries and offers for delivery during the base period * * *

(3) On or before March 22, 1951, you must also prepare and preserve a ceiling price list, showing the commodities in each category (listing each model, type, style, and kind), or the services, delivered or offered for delivery by you during the base period together with a description or identification of each such commodity or service and a statement of the ceiling price. Your ceiling price list may refer to an attached price list or catalogue * * *

(4) You must also prepare and preserve a statement of your customary price differentials for terms and conditions of sale and classes of purchasers, which you had in effect during the base period.

(b) *Current records.* If you sell commodities or services covered by this regulation you must prepare and keep available for examination by the Director of Price Stabilization for a period of two years, records of the kind which you customarily keep showing the prices which you charge for the commodities or services. In addition, you must prepare and preserve records indicating clearly the basis upon which you have determined the ceiling price for any commodities or services not delivered by you or offered for delivery during the base period * * *

"Base period" as used in section 16 of the General Ceiling Price Regulation means December 19, 1950, to January 25, 1951, inclusive.

(2) You shall prepare and preserve for the life of the Defense Production Act of 1950 and for two years thereafter all records necessary to determine whether you have computed your ceiling prices correctly, including (but not limited to) records showing base period prices and material and labor costs, and records showing costs, prices and sales, for the other applicable periods and dates referred to in the regulation.

The records to be preserved under this paragraph must include appropriate work sheets. The work sheets to be preserved must include all data and calculations required to determine your ceiling prices.

(3) You shall preserve for a period of two years all records showing the prices at which sales of commodities subject to the regulation have been made.

(b) *Reports.* (1) You must file with the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C., on or

¹ The portions of the General Ceiling Price Regulation here referred to applicable to manufacturers, are as follows:

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before the effective date of this regulation one or more reports on Public Form No. 8 in accordance with the instructions contained in Appendix C. Copies of the form may be obtained from any Regional or District Office of the Office of Price Stabilization. If you report a ceiling price for any commodity higher than your ceiling price under the General Ceiling Price Regulation, you must file your report by registered mail, and you must wait fifteen days before selling as provided in section 46.

(2) The Director of Price Stabilization may from time to time require additional information or reports subject to the approval of the Bureau of the Budget under the Federal Reports Act of 1942.

SEC. 45. Definitions and explanations—(a) Automotive parts. This term means all engine parts, body parts, chassis parts, motors, electric equipment and wheels, and all other component parts and subassemblies, of automobiles, trucks, busses, trailers, semi-trailers, and motorcycles (except rebuilt bodies of trucks, busses, trailers or semi-trailers) and all accessories and optional, extra and special equipment designed for use on, or with, such motor vehicles, and unfinished parts and components thereof, when in such form as to permit their use only as automotive parts, but does not mean any service or maintenance accessories such as anti-freeze, body polish, tools, etc., or tires, tubes, sheet or other non-processed glass.

(b) **Category.** This term is defined in section 5.

(c) **Class of purchaser or purchaser of the same class.** Class of purchaser is determined in the first instance by reference to your own practice of setting different prices for sales to different purchasers or groups of purchasers. The practice may (but need not) be based on the characteristics or distributive level of the buyer (for instance, manufacturer, wholesaler, individual retail store, retail chain, mail order house, government agency, public institution). It may (but need not) be based on the location of the purchaser or the quantity purchased by him. If you have followed the practice of giving an individual customer a price differing from that charged others, that customer is a separate class of purchaser.

If in your industry a practice prevails of charging different prices for sales to groups of buyers based on their characteristics or distributive level, any such group to whom you did not make sales during your base period and for whom you did not have a customary differential in effect during or before your base period, is a separate class of purchaser as to you.

(d) **Commodity.** This term includes any item, object, material, article, product or supply.

(e) **Delivered.** A commodity shall be deemed to have been delivered if it was received by the purchaser or by any carrier, including a carrier owned or controlled by the seller, for shipment to the purchaser.

(f) **Director of Price Stabilization.** This term also applies to any official (including officials of Regional or District

offices) to whom the Director of Price Stabilization by order delegates a function, power or authority referred to in this regulation.

(g) **End of your base period.** This term means June 24, 1950, if your base period is April 1 through June 24, 1950, or if you elected a previous calendar quarter as your base period in accordance with section 4, it means the last day of that quarter. If, however, you have elected different base periods for different commodities or categories in accordance with sections 4 or 5, the date you will use as the end of your base period is determined as follows:

(1) If you are calculating the "labor cost adjustment" or the "materials cost adjustment" upon the basis of your entire business or of a unit of your business and your base period is the same for all commodities produced in that unit, the last day of that base period is the end of your base period.

(2) If you are calculating the "labor cost adjustment" upon the basis of your entire business or of a unit of your business and your base period for all of the commodities being priced is not the same, the last day of the particular base period you have elected which covers the group of commodities having the largest aggregate dollar volume of sales in calendar or fiscal year 1950 is the end of your base period for your calculation of the "labor cost adjustment."

(3) If you are calculating the "materials cost adjustment" upon the basis of your entire business or a unit of your business and your base period for all of the commodities being priced is not the same, the last day of the particular base period you have elected for the group of commodities having the largest aggregate dollar volume of sales in calendar or fiscal year 1950 is the end of your base period for your calculation of the "materials cost adjustment".

(4) If you are calculating the "materials cost adjustment" for a commodity under method 2 (section 18) or method 3 (section 19) the end of your base period is the last day of the particular base period you are using.

(h) **Farm equipment.** This term means any mechanical equipment, attachment or part used primarily in connection with the production and farm processing for market and farm use of agricultural products, and also the categories of non-mechanical equipment, attachments and parts included in the partial list of farm equipment mentioned below. The term "farm equipment" does not include automobiles, trucks, general purpose tools, hardware items, hand tools, prefabricated farm buildings, grain bins, building materials, electrical equipment (except electrically motivated farm equipment and fence controllers), lawn mowers, sprays or other chemicals, commercial processing machinery, livestock, seeds, feeds or any other agricultural products. A partial list of "farm equipment" follows: farm tractors; garden tractors; planting, seeding and fertilizing machinery; plows and listers; harrows, rollers, pulverizers, and stalk cutters; cultivators and weeders; harvesting machinery (combines, binders, pickers, potato diggers, pea and bean

harvesters, beet lifters, etc.); haying machinery (mowers, rakes, hay loaders, stackers, balers, etc.); manure loaders; dairy farm equipment (milking machines, farm milk coolers (except mechanically refrigerated), farm cream separators, etc.); poultry farm equipment (incubators, brooders, feeders, waterers, etc.); bee keepers' equipment; agricultural spraying equipment; weed burners for farm use; barn and barnyard equipment; mechanical hog feeders; ironed singletrees, doubletrees and neck yokes; electrical fence controllers; farm water pumps and water systems; irrigation systems and equipment for farm use; windmills; windmill generating sets; portable farm grain elevators; wood slat corn cribbing woven with wire; silos; wood-sawing machines intended for farm use; machines for farm processing for market or farm use (farm size cane mills, cider mills, corn shellers, corn huskers and shredders, ensilage cutters, feed cutters, feed grinders and crushers, fruit presses, grain cleaners and graders, grain threshers, hammer mills, hay presses, peanut pickers, potato sorters and graders, syrup evaporators, etc.); farm wagons; and attachments and parts for all the foregoing.

(i) **Installation or erection service.** This term means the service of installation or erection required to install or erect a commodity covered by this regulation, where such service is performed by the manufacturer of the commodity, which is installed or erected, or by a parent, affiliate or a wholly owned subsidiary of the manufacturer of that commodity.

(j) **Largest buying class of purchaser.** This term refers to the "class of purchaser" of a commodity which bought from you the largest dollar amount of that commodity during your base period. It does not, however, include the United States or any agency thereof, any foreign purchaser, or any person to whom the only sales made during your base period were made under a written contract of at least 6 months' duration entered into prior to the base period, unless the United States or any agency thereof, any foreign purchaser or such contract purchaser was your only class of purchaser.

(k) **Manufacturer.** This term means any one of the following:

(1) Any person engaged in one or more operations in the fabrication, processing or assembly of the commodity being priced, including subcontractors.

(2) Any person who sells a commodity which has been produced on his account from materials or parts owned by him.

(3) Any person who sells a commodity under his own brand or trade name.

(l) **Manufacturing material.** This term is explained in section 14.

(m) **Net cost or net price.** Each of these terms refers to the cost or price to you of a manufacturing material, less any discount (other than a customary cash discount) or allowance you took or could have taken. It does not include separately stated charges such as freight, taxes, etc.

(n) **Net sales.** This term refers to gross sales after trade discounts, less returns and allowances. In the case of sales where the selling price is a deliv-

ered price, transportation charges should not be deducted.

(o) *OPS*. This means the Office of Price Stabilization.

(p) *Person*. This term includes any individual, corporation, partnership, association or any other organized group of persons, or legal successors or representatives of the foregoing, and the United States or any other Government or their political subdivisions or agencies.

(q) *Plant*. This term refers to a single physical location where business is conducted or industrial operations are performed, for example, a factory or a mill. If such a single physical location comprises two or more units, with separate payroll and inventory records, engaged in distinct industrial activities, each unit shall be treated as a plant.

This definition of "plant" is based on the definition of "manufacturing establishment" in the Standard Industrial Classification which is consistent with that used by the Bureau of Census in the 1947 Census of Manufacturers and subsequent surveys.

(r) *Product line*. This term is explained in section 19.

(s) *Records*. This term means books or accounts, sales lists, sales slips, orders, vouchers, contracts, receipts, invoices, bills of lading, and other papers and documents.

(t) *Sale at retail*. Sale at retail means any sale to an ultimate user, other than an agricultural, commercial, industrial, governmental or institutional user.

(u) *Sell*. This term includes sell, supply (with respect to either commodities or services), dispose, barter, exchange, transfer and deliver, and contracts and offers to do any of the foregoing. The terms "buy" and "purchase" shall be construed accordingly.

(v) *Service*. This term includes any service rendered or supplied otherwise than by an employee.

(w) *Written offer or written offer for sale*. Each of these terms refers to an offer for sale made by means of the seller's price list or, if he has no price list, a written offer otherwise made in the seller's customary manner. The term does not include an offer at a price intended to withhold a commodity or service from the market or used as a bargaining price by a seller who usually sells at a price lower than his asking price.

(x) *You*. "You" means the person subject to this regulation. "Your" and "yours" are construed accordingly.

SEC. 46. Prohibitions. (a) On and after the effective date of this regulation, regardless of any contract or other obligation, (1) you shall not sell any commodity or service subject to this regulation at a price exceeding your ceiling price as determined under this regulation, and (2) no person shall buy from you, in the regular course of business or trade, any commodity or service subject to this regulation at a price exceeding your ceiling price as determined under this regulation.

(b) On and after the effective date of this regulation you shall not sell any commodity or service subject to this regulation unless you have complied with

the report requirements of section 44, where you are required to do so.

(c) In the event your ceiling price for a commodity or service under this regulation is higher than your ceiling price under the General Ceiling Price Regulation you shall not sell the commodity or service at a price exceeding your ceiling price under the General Ceiling Price Regulation, except under the following conditions:

(1) You must send by registered mail a report, relating to that commodity or service, on Public Form No. 8 (in accordance with the instructions shown in Appendix C) to the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C. Copies of this form can be obtained from any Regional or District office of the Office of Price Stabilization.

(2) You must wait 15 days after the date of receipt by the Office of Price Stabilization of the report, as shown on your return receipt.

(3) At the end of that 15-day period, or on or after the effective date of this regulation, whichever is later, you may deliver that commodity or service at your ceiling price as determined under this regulation, unless and until notified by the Director of Price Stabilization to continue using your GCPR ceiling price, or such higher ceiling price as he may permit, either because your ceiling price proposed under this regulation has been disapproved in whole or in part, or because more information is required.

SEC. 47. Transfers of business or stock in trade. If the business, assets or stock in trade are sold, or otherwise transferred, after the issue date of this regulation, and the transferee carries on the business, or continues to deal in the same type of commodity or service, in an establishment separate from any other establishment previously owned or operated by him, the ceiling prices of the transferee shall be the same as those to which his transferor would have been subject if no such transfer had taken place, and his obligation to keep records sufficient to verify such prices shall be the same. The transferor shall either preserve and make available, or turn over, to the transferee all records of transactions prior to the transfer which are necessary to enable the transferee to comply with the provisions of this regulation.

SEC. 48. Charges lower than ceiling prices. Lower prices than those established under this regulation may be charged, demanded, paid or offered.

SEC. 49. Evasion—(a) In general. The price limitations set forth in this regulation shall not be evaded, whether by direct or indirect methods, in connection with an offer, solicitation, agreement, sale, delivery, purchase, lease of, or relating to, commodities or services covered by this regulation, alone or in conjunction with any other commodity or service, or by way of commission, service, transportation, or other charge, or discount, premium or other privilege, or by tying-agreement or other trade understanding, or otherwise.

(b) *Specific practices*. The following practices are, specifically but not exclusively, among the practices prohibited by

paragraph (a) and are itemized here only to lessen the frequency of interpretative inquiries which experience indicates are likely to be raised under the general evasion provision:

(1) Paying a purchase commission, if the sum of the commission and the purchase price exceeds the ceiling price.

(2) Requiring a customer to furnish material for processing not in accordance with previous practice.

(3) Entering into a joint venture with any other person subject to this regulation for cross-selling, cross-purchasing or cross-servicing.

(4) Reducing the period of any warranty or guarantee of performance in effect during your base period.

(5) Eliminating or reducing any maintenance, repair, replacement or installation service in effect during your base period.

(6) Granting less than a reasonable allowance for commodities received in trade.

(7) Eliminating or reducing rental or trade-in credits on purchases.

(8) Renting or leasing a commodity with an option to purchase, when the sum of the rental and the sale price exceeds the ceiling price established by this regulation for the sale of the commodity.

SEC. 50. Violation—(a) Civil and criminal action. Persons violating any provisions of this regulation are subject to the criminal penalties, civil enforcement actions and suits for treble damages provided for by the Defense Production Act of 1950.

(b) Record-keeping and filing violations. If any person subject to this regulation fails to keep the records or file the reports required by this regulation, or if any person subject to this regulation fails to establish a ceiling price or apply to the Office of Price Stabilization for the establishment of a ceiling price, if he is required to do so, the Director of Price Stabilization may issue an order fixing ceiling prices for the commodities or services such person sells. Any ceiling price fixed in this manner will be in line with ceiling prices established by this regulation. The order fixing the ceiling price may apply to all deliveries or transfers for which a ceiling price was not established in accordance with the provisions of this regulation, including deliveries or transfers completed prior to the date of issuance of the order. The issuance of such an order will not relieve the seller of his obligation to comply with the requirements of this regulation or of the various penalties for failure to do so.

Effective date. The effective date for this regulation is May 28, 1951.

Note.—The record keeping and reporting requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

MAY 4, 1951.

APPENDIX A—COMMODITIES COVERED BY THIS REGULATION

The commodities covered by this regulation are listed below:

Abrasive products, including coated, bonded, natural stone and artificial abrasives.

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Air-conditioning equipment, condensing units of 25 tons capacity and over.
 Anchors, marine, earth and rock.
 Antennas, radio and television, except built-in antennas included within the cases of domestic radio or television receivers.
 Anvils, except jewelers' anvils.
 Arresters, lightning, including lightning rods.
 Asphalt mixing plants and attendant plants.
 Attachments and accessories for machinery and machine tools, including the following illustrative list:
 Adapters.
 Arbors.
 Blocks, machine tool.
 Brakes, spindle.
 Centers, bench.
 Centers, lathe.
 Chucks, all types.
 Clamps.
 Collets.
 Die heads.
 Die sets.
 Dogs, work driving.
 Edges, straight.
 Electric etchers and de-magnetizers.
 Feeding devices.
 Glass, level.
 Grinders.
 Ground steel stock for punches, dies, jigs, fixtures, etc.
 Guides, adjustable.
 Heads.
 Holders, tool and work.
 Mandrels, all types.
 Plates, all types.
 Posts, tool.
 Saw accessories (sets, swages, guides, clamps, bracing tools).
 Sockets.
 Stops, machine.
 Templates.
 Torque wrenches.
 Wheels, buffing and polishing.
 Augers, earth.
 Automotive parts (See definition in section 45).
 Automotive testing and maintenance equipment, mechanical and electrical.
 Automotive trucks (including fire trucks), motorcycles, busses and house and truck trailers.
 Batteries, storage.
 Battery chargers.
 Bearings, antifriction (ball, roller, needle, etc.).
 Bearings and bushings, ferrous and non-ferrous.
 Belting, leather and textile.
 Bimetallic thermal strips, fabricated.
 Blocks and tackle.
 Boilers, power, industrial and marine, 100 p. s. i. and higher working pressure.
 Broom-making machinery.
 Brushes, industrial, power-driven.
 Brush-making machinery.
 Bushings, porcelain, glass and steatite, for electrical uses.
 Cable, insulated, electrical.
 Cable accessories, electrical.
 Can-making machinery and equipment.
 Capacitors, electrical.
 Carbon graphite and metal graphite for electrical uses.
 Carriers, lumber, steel, etc., specifically designed for industrial or commercial use.
 Cars, freight, including all types of flanged wheel mining and industrial cars.
 Cars, passenger, for surface, subway or elevated lines.
 Casters.
 Cement-making machinery.
 Ceramics machinery.
 Chain, power transmission, including chain fittings and assemblies.
 Chemical processing machinery.
 Circuit breakers, electrical.
 Clamps of the C and bar type, except those used for medical or dental purposes.

Clevises.
 Clockwork systems, industrial, used in connection with mechanical instruments.
 Coal preparation equipment.
 Compressors, except those used with condensing units under 25 horsepower or 25 tons.
 Concrete products machinery and equipment.
 Condensers, synchronous, electrical.
 Conduit fittings.
 Conduit.
 Control equipment, electrical, industrial.
 Convertors, synchronous, electrical.
 Conveyors and conveying systems, industrial.
 Core drilling and core making machinery.
 Cotton-ginning machinery.
 Cranes, crawler, overhead bridge, locomotive, revolving, truck and others.
 Cutting tools, including the following illustrative list:
 Augers, machine.
 Bits, machine.
 Blades, hacksaw—all types.
 Blades, power-driven saw.
 Blades, machine, shear, etc.
 Broaches.
 Chasers.
 Chisels, machine.
 Counterbores.
 Countersinks, machine.
 Cutters.
 Dies, cutting and threading.
 Dressers, abrasive wheel.
 Drills.
 Extractors.
 Files, rasps and burrs.
 Form tools.
 Hobs.
 Knives, machine.
 Knurling tools.
 Punches, machine.
 Reamers.
 Rules, creasing, cutting and perforating.
 Scraper blades, machine.
 Taps.
 Tips: tool, tungsten carbide, stellite, etc.
 Cylinders, power, hydraulic, pneumatic and hydropneumatic.
 Derricks.
 Diamond tools: core bits, dies .002" and larger, dressing tools, shaped tools, wheels, etc.
 Dies, jigs, and fixtures.
 Die-casting machinery.
 Distribution boards, electrical.
 Dollies, industrial.
 Dozers, angle, bull and push.
 Dredging machinery.
 Dry-cleaning and clothes-pressing machinery, except domestic.
 Ducts for electrical uses, except those manufactured from asbestos, cement, ceramic materials or clay.
 Dust-collecting equipment, industrial, portable and stationary, including industrial vacuum cleaners.
 Economizers, steam, industrial and marine.
 Electrodes.
 Electroplating and hot-dip metal coating equipment, including preparatory and finishing equipment used in connection with metal coating processes.
 Electro-therapeutic apparatus and supplies.
 Electronic devices, equipment and parts (other than radio and television receivers).
 Elevators, passenger and freight.
 Engines, diesel and oil.
 Engines, gas.
 Engines, gasoline and kerosene, except toy and portable and outboard motors.
 Engines, steam, except toy.
 Engine-generator sets.
 Escalators (moving inclined stairways for raising or lowering passengers).
 Excavating and earth-moving machinery, including power shovels, ditchers, draglines and power scrapers.
 Fabricated structural steel shapes, plates and bars.
 Fans and blowers, industrial, excluding unit heaters or unit ventilators, hand blowers, and desk, pedestal, portable, ceiling and wall-bracket type fans, but including warm air furnace fans, attic ventilating fans, pressure fans and blowers and built-in fans.
 Farm equipment (see definition in section 45).
 Feed-water heaters, industrial and marine.
 Floor surfacing and floor maintenance machinery, industrial.
 Food and beverage machinery, including baking, bottling, brewing, canning, confectionery, grain milling, meat packing, edible oil, sugar and dairy machinery and equipment.
 Forgings (all ferrous and non-ferrous metal products commonly known as "forgings" which are formed by the use of power-actuated hammers, presses, or forging machines, including "forgings" upon which supplementary operations, such as trimming, coining, testing, inspecting, heat treating, welding, machining, plating, or other surface coating, have been performed).
 Foundry machinery, including ladles not over 40-ton capacity.
 Furnaces and ovens, industrial and laboratory, except space heating, warm air furnaces, stoves, blast furnaces, open hearth furnaces, Bessemer converters and soaking pits, coke ovens, and industrial furnaces used solely for the manufacture of pig iron and steel.
 Fuses for the protection of electrical equipment.
 Galvanometer and pyrometer movements.
 Gas burners designed for use with products covered by this regulation.
 Gaskets and packings, except those made in whole or in part of rubber.
 Gauges, specifically designed for industrial or commercial use.
 Gears, pinions, sprockets and speed reducers, including gear motors, motorized speed reducers and variable speed and other machine drives.
 Generators, electrical.
 Generators, gas.
 Generator sets, diesel-electric, gas engine, electric and motor or engine driven.
 Glass-making machinery.
 Governors, engine.
 Glass products, industrial, scientific and technical which are listed below:
 Electrical glassware:
 Bulbs, glass portion (incandescent, fluorescent, indicator, auto lamp, radio, television, X-ray, radar and power tube).
 Bushings.
 Capacitors.
 Coil forms.
 Flares (glass base portion for lighting, radio, indicator, auto lamp, television, X-ray, radar and power tube).
 Fuse plugs.
 Insulators.
 Resistor tubes.
 Tubing (electrical, fluorescent).
 Industrial glassware:
 Cylinders.
 Flat gauge glasses.
 Glass bulbs.
 Gauge cup and oil cup glasses.
 Meter and relay covers.
 Miscellaneous industrial glassware which is to be further fabricated by others or which is to be incorporated as a component part of an industrial product.
 Laboratory and pharmaceutical glassware:
 Apparatus ware.
 Chemical ware.
 Instrument tubing.
 Laboratory apparatus tubing.
 Vials and ampules.
 Optical glass:
 Rough glass blanks for optical, ophthalmic and scientific use.

Glass products, industrial, scientific and technical—continued
 Signal glassware:
 Airplane running lights.
 Battery jars.
 Explosion resisting globes.
 Fresnels.
 Front glasses.
 Lenses.
 Obstruction lights.
 Optical ware (color and light filters).
 Roundels.
 Ground steel stock for punches, dies, jigs, fixtures, etc.
 Gyroscopes.
 Hat-making and repairing machinery.
 Heat exchanger equipment (when designed for use with products covered by this regulation).
 Heaters, sand, stone or bitumen.
 Heating, melting, burning and thawing equipment, portable, for industrial and transportation purposes, except mechanics' fire pots and blow torches.
 Heating units and devices, electrical, industrial.
 Hoists.
 Hose and tubing, metal, flexible.
 Hydraulic machinery.
 Instruments, electrically or mechanically operated for measuring, testing, indicating or recording electrical quantities.
 Instruments, mechanical, for indicating, measuring, recording and testing, including aircraft, laboratory, marine, precision and scientific mechanical instruments, but excluding tire gauges, carpenters' tools, clinical, dental, household, optical and surgical instruments, low pressure heating controls (such as thermostatic traps, blast traps and strainers), water level controls (all types), air temperature and humidity controls (all types), coin-operated devices and household refrigeration controls.
 Insulators, porcelain, glass and steatite, for electrical uses.
 Inter-communicating systems, electronic.
 Jacks and jack screws.
 Kilns (except brick), coolers and dryers, specifically designed for industrial or commercial use.
 Laundry machinery, except domestic.
 Leather-working machinery.
 Lighting equipment, electrical, for airway, commercial, flood-lighting, industrial, marine, seadrome, and street and highway uses.
 Lighting fixtures, not portable.
 Line material, transmission or trolley.
 Loading and unloading equipment, specifically designed for industrial or commercial use.
 Lock and dam machinery, which is designed exclusively for the control of water flow in locks, dams and structures when such locks, dams, and structures are designed for flood control, irrigation, power generation or transportation purposes.
 Locomotives and tenders, including mining and industrial.
 Logging and lumbering machinery and equipment.
 Lubricating systems and devices, industrial, stationary.
 Machinery, industrial, not listed elsewhere in this Appendix. The term "industrial machinery" means any machinery or equipment, not specifically excluded from the coverage of this regulation, which is used in the extraction, production or processing of commodities.
 Machine tools (power driven machines used for shaping metal by cutting, abrading, straightening, forcing, forging or forming under pressure).
 Machine tool attachments (any accessory equipment furnished with a machine tool, or separately for use on a machine tool).

Machines, tools, devices and appliances designed specifically for the installation, operation, maintenance and protection of tracks, yards, signals, rolling stock and motive power of surface, subway or elevated rail lines.
 Magnets.
 Magnets, lifting, industrial.
 Marine equipment listed below:
 Anchors.
 Boat hooks without handles.
 Buoys, pontoons and rafts, metallic.
 Capstans.
 Chocks.
 Cleats.
 Controls, bulkhead and throttle.
 Deck and manhole plates, machined.
 Fog horns and whistles, manually operated.
 Gooseneck and boom bands.
 Hatch covers, metal.
 Lights, oil.
 Marlin spikes and belaying pins, metal.
 Mooring and riding bits.
 Port lights.
 Pumps, marine, manually operated.
 Reels, hawser, manually operated.
 Rope guides and leaders.
 Rowlocks.
 Shackles.
 Snaps.
 Sockets.
 Steering apparatus, manually operated.
 Ventilators.
 Metals and alloys, special, electrical (except steel with less than 6% alloy content, in any fabricated form) used for electrical, magnetic or glass-sealing purposes, including special contact alloys and special coated iron wire.
 Mining and quarrying machinery, including mine cars and trucks.
 Molds and patterns.
 Motion picture equipment, 35 millimeter, including sound equipment and parts for recording, reproducing and projecting, for studio, theatre, commercial or industrial use.
 Motors, electrical.
 Neon indicator attachments.
 Numbering and marking machines for use on metal, except office machines.
 Oil burners, industrial and marine, burning No. 5 oil or heavier, except horizontal, rotary and gun type burners.
 Oil mill machinery and equipment.
 Oil-well and oil-field machinery and equipment.
 Optical processing machinery.
 Ore-crushing and concentrating machinery.
 Ovens, industrial and laboratory, except coke ovens.
 Packaging, wrapping, filling and labeling machinery.
 Paint-making and ink-making machinery.
 Panelboards, electrical.
 Parts and subassemblies of any item listed in this Appendix except mechanical rubber goods.
 Petroleum refining machinery.
 Pharmaceutical machinery.
 Pile drivers.
 Pipe wrapping and coating machinery.
 Pistons and piston rings.
 Plants, stationary, for railroad use in handling cinders, fuel, sand or water.
 Plastics fabricating and molding machinery.
 Pole-line hardware and line construction specialties.
 Power transmission equipment, industrial, including belt-tighteners, blocks and bearing housings, brackets, clutches, collars, couplings, hangers, motor bases, pillow blocks, pulleys, sheaves, shifters, universal joints and variable speed and other machine drives.
 Presses, specifically designed for industrial or commercial use.
 Printing machinery and equipment.
 Public address apparatus.
 Pulp, paper and paper products machinery.
 Pulverized fuel burners.
 Pumps, power operated, with or without power.
 Pumps, hand-operated except store fixtures, Railroad car and locomotive parts, and specialties for elevated, subway or surface lines, including:
 Axles.
 Bearings, truck side.
 Boilers, fireboxes, front ends and cabs, fittings, fixtures, devices, or appliances mounted thereon.
 Brakes and brake gears.
 Coupler devices or attachments.
 Devices and appliances mounted on locomotives for treatment, distribution or control of water, fuel, steam, sand or electricity.
 Doors and fixtures.
 Draft gears, buffers, and attachments.
 Driving, foundation, or running gear.
 Grain control apparatus.
 Journal boxes, assembled.
 Heating, lighting, ventilation, and air-conditioning equipment.
 Lubricating devices.
 Miscellaneous fittings, fixtures, specialties, devices or appliances designed specifically for use on railroad cars or locomotives, except artillery or other exclusively military or naval equipment.
 Safety appliances and warning devices.
 Sides, roofs, ends, running boards, and brake steps.
 Spring rigging, snubbers and shock absorbers.
 Tires, steel.
 Trucks, complete.
 Underframes.
 Wheels, iron and steel.
 Rectifiers, power, industrial.
 Refrigeration equipment, condensing units of 25 horsepower and over.
 Regulators, feeder voltage.
 Regulators and dampers, power operated, except those designed for domestic heating systems.
 Replacement units and assemblies for mechanical refrigerators having a refrigerated volume of 16 cubic feet or less, when sold by the manufacturer.
 Reproduction machinery, architectural and engineering, such as blueprinting, black and white printing, and brown printing machinery.
 Road and airport building and maintenance machinery, including graders, pavers, rollers, sprayers, mechanical road cleaning equipment, etc.
 Rock-crushers and plants.
 Rod, wire and tube-working machinery and equipment.
 Rolling mill machinery and auxiliary equipment.
 Rope fittings, manila and wire.
 Rubber and allied products machinery.
 Rubber tire and tube machinery and equipment, including tire recapping and retreading molds and necessary parts (full circle and sectional molds, matrices, etc.), tire buffers and spot vulcanizers for tubes, Saws, specifically designed for industrial or commercial use.
 Scaffolds and towers.
 Scales, weighing, industrial and laboratory, except coin operated, counter, household, office and store types.
 Screw machine products, when sold by the manufacturer, except those for which the manufacturer issues a catalog or price list. The term "screw machine product" means any product that is made complete or in its first operation on a hand or automatic screw machine.
 Searchlights.
 Separators, steam, industrial and marine.
 Sewing machines, industrial.
 Sharpening and filing equipment.
 Shoe manufacturing and repairing machinery.
 Signal equipment, railroad, including highway crossing signals.
 Signalling apparatus.

RULES AND REGULATIONS

Siren blowers.
Skid platforms and pallets, all metal.
Snow plows.
Soot blowers and tube cleaners, power operated, industrial and marine.
Sound recording and reproducing equipment and parts, including portable recorders and recording and transcription turntables, except home or office recording or reproducing equipment.
Spraying devices, industrial, power-operated, for the application of any material.
Spreaders for construction and road-building use.
Springs, except furniture and bed springs.
Spring winding and forming machinery.
Sprockets, power transmission.
Stackers, industrial.
Stampings, metal, when sold by the manufacturer, except non-ferrous mill products, wire goods, steel mill products, or any product for which the manufacturer has issued a catalog or price list. The term "metal stampings" means stamped or pressed metal products which are mechanically processed by the use of dies and upon which further finishing operations may or may not have been performed, when sold unassembled. A metal stamping may consist of two or more stamped pieces which have been permanently joined by methods such as brazing, riveting, soldering or welding.
Steam cleaning and degreasing equipment and parts, washing and cleaning equipment, except commercial and domestic dish and utensil washing and cleaning equipment.
Steam specialties.
Stokers, industrial and marine, with a capacity of 1200 pounds per hour or more.
Stone working machinery.
Sub-stations, unit (power distribution).
Superheaters, industrial and marine.
Surveying instruments, such as alidades, levels and transits.
Switchboxes.
Switches, electrical, knife and enclosed.
Switchgear and switchgear accessories.
Tanks and vessels, pressure, made of metal 10 B. W. G. and heavier, regardless of capacity, or of a capacity in excess of 192 gallons, regardless of gauge, except field erected storage tanks or cylinders which are designed primarily for the transportation of liquids or gases under pressure and which are not designed to be permanently attached to the vehicle transporting such tanks.
Tanks and vessels, non-pressure, made of metal heavier than 10 B. W. G., regardless of capacity, or of a capacity in excess of 585 gallons, regardless of gauge, except all obround tanks; field erected tanks or vessels; products commonly known as plumbing fixtures, such as flush tanks and laundry trays; products commonly known as pans and cans, such as pails and buckets; non-returnable shipping retainers; refuse receptacles, drip and waste receivers; and septic tanks.
Telegraph apparatus.
Telephone apparatus, including sound and powered telephone and non-electronic intercommunicating equipment.
Testing sets for electronic equipment.
Textile machinery, including equipment and accessories designed exclusively for use with such machinery.
Tobacco working machinery.
Tools, manually operated, for the cutting, forming and punching of metals.
Tools, pipe and tube, manually operated, including beading, beiling, banding, cleaning, cutting, expanding, and flaring and wrenches for operating.
Tools, power-driven, portable or non-portable.
Tractors.
Trailers.
Transformers, including specialty transformers.

Trucks, industrial, hand.
Trucks, power-operated, lift, platform and straddle.
Turbine generator sets.
Turbines and governors, gas, hydraulic and steam.
Turnbuckles.
Vises, all types, vise mounts, stands and supports.
Water conditioning and purifying equipment, industrial.
Water power equipment.
Welding apparatus and supplies, electrical, including electrodes.
Welding and cutting apparatus and supplies, gas, including generators, welding rods and welding wire.
Well-drilling equipment.
Wheels.
Winches and windlasses, manually or power operated.
Wire accessories, electrical.
Wire, insulated, electrical.
Wire machinery.
Wiring devices, electrical.
Woodworking machinery.
X-ray and electro-therapeutic apparatus and supplies.

APPENDIX B

With respect to the following manufacturing materials, the change in net cost may be calculated up to March 15, 1951.

- (a) Stumpage, logs, pulpwood, and other raw forest products.
- (b) Gas, electricity, and steam.
- (c) All scrap and waste materials.
- (d) The following textile mill products:
 - (1) All wool fibers which have been processed beyond the scouring stage.
 - (2) Wool yarn and fabrics as defined in Ceiling Price Regulation 18, together with all other yarns and fabrics containing 25% or more wool by weight, however manufactured.
 - (e) Lumber, plywood, veneers, shocks, millwork, wood containers, ties, posts, poles, piling, and other allied products, such as, but not limited to, handles, shuttle points, and picker sticks.
 - (f) The following chemicals and allied products:
 - (1) Crude and synthetic rubber.
 - (2) Synthetic textile fibers and yarns.
 - (3) Fermentation ethyl alcohol, acetone, and butyl alcohol.
 - (4) Synthetic butyl alcohol made from fermentation ethyl alcohol.
 - (5) Natural and synthetic glycerin.
 - (6) Fatty acids.
 - (7) Paints, varnishes, and lacquers.
 - (8) Naval stores.
 - (9) All natural gums and resins.
 - (10) All vegetable waxes.
 - (11) All natural dyeing materials.
 - (12) All essential or distilled oil.
 - (13) Fats and oils for which ceiling prices are provided in Ceiling Price Regulation 6.
 - (14) The following oilseeds or nuts, their oils and fatty acids or combinations of these oils so long as in normal trade practice they retain their identity:
- Babassu kernels.
- Babassu oil.
- Cacao butter.
- Cashew nut shell liquid.
- Castor beans.
- Castor oil.
- Cocoanut oil.
- Cohune kernels.
- Cohune oil.
- Copra.
- Coquito kernels.
- Coquito oil.
- Corozo kernels.
- Corozo oil.
- Hempseed.
- Hempseed oil.
- Kapok seed.
- Kapok seed oil.
- Muru-muru kernels.
- Muru-muru oil.
- Oiticica oil.
- Olive oil, edible, sulphur and other inedible.
- Ouricury kernels.
- Ouricury oil.
- Palm kernel oil.
- Palm kernels.
- Palm oil.
- Perilla seeds.
- Perilla seed oil.
- Poppysseed.
- Poppysseed oil.
- Rapeseed.
- Rapeseed oil.
- Rubberseed.
- Rubberseed oil.
- Sesame oil.

Sesame seed.

Sunflower seed.

Tucum kernels.

Tucum oil.

Tung oil.

- (15) Whale oil.
- (16) Sperm oil.
- (17) Fish oils, including cod oil and shark oil.
- (18) Peanut oil.
- (19) Rice bran oil.
- (20) Oleo stock, oil and stearine.
- (21) Inedible tallow, greases and fat-bearing and oil-bearing animal waste materials as defined in Ceiling Price Regulation 6, Amendment 2.
- (22) Wool grease.
- (23) Glue stock.
- (24) Casein.
- (25) Cotton linters.
- (g) Crude petroleum and petroleum fuels and lubricants, including petroleum coke when used as fuel, and natural gas.
- (h) Coke, coal chemicals, coke oven gas, as defined in General Ceiling Price Regulation, Supplementary Regulation 13.
- (i) Bituminous coal, anthracite coal, coal briquettes, charcoal, and fuel processed from anthracite or bituminous coal.
- (j) Cattle hide, kips, and calfskins, as defined in Ceiling Price Regulation 2.
- (k) Hogsskins, woolskins, sheep and lamb shearlings, pickled lambskins, pickled sheepskins, horsehides, deerskins, alligator skins, and snakeskins.
- (l) Leather, tanned and finished.
- (m) The following stone, clay, and glass products:
 - (1) Glass containers and glass closures.
 - (2) Portland cement.
 - (3) Ready-mixed concrete.
 - (4) Calcined gypsum plasters.
 - (5) Lime (construction, metallurgical, chemical, agricultural, plastic).
 - (6) Sand, gravel, and crushed stone, both aggregates and industrial.
 - (7) Light weight aggregates.
 - (8) Merchant clays.
 - (n) Primary metals and metallic alloys.
 - (o) All secondary metals and scrap.
 - (p) All metal powders.
 - (q) All metallic ores.
 - (r) All non-metallic minerals.
 - (s) All cast, rolled, drawn, or extruded metals and alloys which have not been further fabricated.
 - (t) Fabricated structural steel and steel plate and fabricated reinforcing bars.
 - (u) Wood pulp, paper, paper board, and converted paper and paperboard products.
 - (v) All imported materials, when purchased from a foreign supplier, or from a seller in the United States in substantially the same form as that in which imported (except for services normally performed by importers such as sorting or packaging), or after simple processing operations only, such as wool scouring.
 - (w) All jute products containing more than 50 per cent by weight of jute.
 - (x) All industrial services.

APPENDIX C—CHANGES IN USE OF OPS PUBLIC FORM NO. 8 WITH THIS REGULATION

OPS Public Form 8 and instructions for its use have been filed with the Division of the Federal Register as part of this regulation. Copies of this form and its instructions may be obtained from any District or Regional Office of the Office of Price Stabilization.

In using OPS Public Form 8, which is required to be filed by sections 44 and 46 of this regulation, you must make the following changes in the instructions which accompany OPS Public Form 8.

- The report under this regulation must be filed with the Industrial Materials and Manufactured Goods Division, Office of Price Stabilization, Washington 25, D. C., instead of with the Office of Price Stabilization, Washington 25, D. C.

2. In filing OPS Public Form 8 for commodities covered by this regulation, you may disregard items 8 (e) and (g) in the instructions, and the corresponding portions of the report, for any commodity for which, prior to the effective date of this regulation, you have not had a ceiling price established under sections 3, 6 or 7 of the General Ceiling Price Regulation.

3. The examples of "categories" contained in the instructions for OPS Public Form 8 are not applicable to the commodities covered by this regulation. Examples of "categories" under this regulation would be: machine tools, electric motors and electric storage batteries.

4. The definition of "product line" in this regulation differs from that contained in the instructions for OPS Public Form 8. A "product line" is defined in this regulation (Section 19 (a) (1)) as "a group of closely related commodities which differ in such respects as model, size or brand name and which are normally classed together as a product line in your industry. Generally speaking, each commodity in the same product line must serve the same purpose and must be made by the same manufacturing process from substantially the same materials".

5. The examples of "product line" contained in the instructions for OPS Public Form 8 are not applicable to the commodities covered by this regulation. Examples of "product line" under this regulation would be: fractional horsepower motors, automotive fan belts and crawler tractors.

6. The section number references in items 4 and 5 of the instructions for use of OPS Public Form 8 are incorrect for this regulation. For this regulation the reference in item 4 should be to sections 12 (e) or 13 (b), instead of to 8 (e) or 9 (b); and the section references for item 5 should be to 17 (d), 19 (c), 20 (d) and 18 (c), instead of to 13 (d), 15 (c), 16 (d) and 14 (c).

[F. R. Doc. 51-5844; Filed, May 4, 1951; 10:38 a. m.]

[General Ceiling Price Regulation, Supplementary Regulation 25]

GCPR, SR 25—COUPON EXCHANGE RATES AND OTHER PREMIUM PROGRAMS

Pursuant to the Defense Production Act of 1950 (Pub. Law 774, 81st Cong.), Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this Supplementary Regulation No. 25 to the General Ceiling Price Regulation (16 F. R. 808) is hereby issued.

STATEMENT OF CONSIDERATIONS

This regulation provides a method for determining the conditions of redemption or the rate at which premium articles offered by certain companies may be exchanged for coupons or for other similar tokens issued by such companies in connection with the sale of merchandise of these same companies. The cost of these premiums has risen since the base period. Unless this increase in cost is absorbed by the companies involved, a larger number of coupons or an enlargement of the conditions of redemption would be required in exchange for each premium article whose price has so increased. The purpose of this regulation is to ensure that any increase in the amount of consumer purchases necessary to secure a coupon, or in the number of coupons required for a premium, or

any other change, direct or indirect, in the conditions for redemption must be directly proportioned to the cost of the premium article.

This Agency recognizes that two general objectives may be achieved by a program of giving away coupons or other tokens which may be later exchanged for valuable premium articles. The first objective is short-term promotions of specific articles; the second, the creation of a consumer loyalty for a line of products. A short-term promotion program frequently takes the form of a package containing some merchandise and a premium, for instance, two bars of soap and a dish towel for twenty cents. Unless this is a real bargain to the intended consumer, the package has no point. In this type of promotional activity, this Agency has only a minor interest. The other type of premium program is the subject of this regulation. When the producer is seeking to establish a regular patronage for his products and to induce the continued purchase of his products by the inducement of valuable premiums that can only be secured by the collection of coupons in such quantities as are attainable only through extensive purchases or by a long continued use of such products, then any inducement to purchase must be considered as being included in the price of such products. Such a producer may not directly or indirectly vary the price of his goods by changes in his coupon exchange program except as permitted in this regulation.

This regulation will require those companies who operate such coupon exchange plans (1) not to increase the amount of their merchandise which must be bought in order to secure one coupon above the highest amount required during the base period, and (2) to calculate their coupon exchange rate on the basis of the lowest number of coupons required for redemption per unit of premium cost to the company during the base period of December 19, 1950 to January 25, 1951. The companies will be permitted by this regulation to increase their redemption conditions by the increase in the cost of the premium article since the base period. This change in conditions may not include a decrease in the number of coupons required. Thus, if the company gave a \$1.00 premium for each 100 coupons and the cost of the same premium article has now risen to \$1.10, the company may now, under this regulation, require 110 coupons, but no more, for that same article on the basis of maintaining the same coupon exchange rate as it had during the base period. In another fashion, if a company gave a \$1.00 dish away upon the presentation to the retailer of 10 coupons and ten cents and the cost of the dish is now \$1.10, the company may now require for the dish either 10 coupons and 20 cents, or 11 coupons and 11 cents, but under no circumstances may it decrease the required number of coupons from ten.

REGULATORY PROVISIONS

Sec.

1. Applicability of this supplementary regulation.
2. Ceiling for coupon exchange rate.
3. Determination of new coupon exchange rates.

Sec.

4. Reports.
5. Definitions.

AUTHORITY: Sections 1 to 5 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply Title IV, Pub. Law 774, 81st Cong., E. O. 10161, Sept. 9, 1950, 15 F. R. 6105, 3 CFR, 1950 Supp.

SECTION 1. Applicability of this supplementary regulation. This regulation shall apply to you if you are a seller who in connection with the sale of your merchandise distributed, during the base period, coupons, certificates, stamps, or other tokens that in specified quantities or under stated conditions are redeemable for premium articles.

SEC. 2. Ceiling for coupon exchange rate. If you are such a seller you shall continue to offer your buyers, as has been your custom, such coupons to be redeemable for such premium articles at a rate of redemption which shall be at least equal to the highest exchange rate (that is, the lowest number of coupons or coupons plus cash required for a stated premium article) per unit of cost of premium article that you had in effect during the base period of December 19, 1950 to January 25, 1951, inclusive. If such coupons had a cash surrender value during the base period, you shall not lower this value from the highest value offered by you for the surrender of such coupons during such base period. You may not increase the amount of your merchandise that must be purchased in order to secure one coupon over the highest amount required by you to secure such coupon during the base period.

SEC. 3. Determination of new coupon exchange rates. (a) If you are such a seller and the cost of your premium articles has increased since the base period established in the General Ceiling Price Regulation, you may increase the number of coupons or the coupons plus cash required to secure such premiums by either the dollars and cents increase or in the percentage increase, but no more, in the cost of the premium article to you over the highest cost to you during the base period of such premium article or, if you made no such purchases during such base period, the highest cost of a representative purchase prior to such base period. In any adjustment of redemption conditions, you may not decrease the required number of coupons.

(b) If you sell the premium article to the retailer who in turn redeems upon stated conditions the coupons, certificates or other tokens issued in connection with the sale of your merchandise, and the cost of the premium has now risen, you may:

(1) Increase the cost of the premium article to the retailer by the dollars and cents increase in the cost to you of that article over the cost to you during the base period for the same article; and

(2) Increase the conditions of redemption which the retailer may exact from his customer by either the dollars and cents increase or in the percentage increase in the cost of your premium article over the cost to you during the base period of the same article. The conditions may not be changed so as to require a fewer number of coupons.

RULES AND REGULATIONS

Thus, if a company gave a \$1.00 dish away upon the presentation to the retailer of 10 coupons and ten cents and the cost of the dish is now \$1.10, the conditions of redemption may now be varied so that you may require the retailer to collect from his consumer either 10 coupons and 20 cents or 11 coupons and 11 cents, but in no case may the required number of coupons be less than ten.

SEC. 4. Reports. Before you may effect any change in the operation of your coupon exchange plan, you must file with the Director of Price Stabilization, Washington 25, D. C., a report (with one copy) stating:

- (a) Your name and address;
- (b) A description of your coupon exchange plan; and
- (c) A statement of the changes in the exchange plan that you intend to make. For example:

(1) If you intend to increase the number of coupons or enlarge upon the stated conditions required to redeem a premium article, as authorized in section 3 of this regulation, you must state the exact changes you intend to make and also the changes in the cost of the premium articles that bring your proposed increase in the redemption conditions within the terms of this regulation. You may not make such change until the Director has advised you, in writing, of his approval.

(2) If you wish to add a premium article to your list of those articles redeemable by the coupons you have distributed to your buyers, you must advise the Director, in writing, of your proposed addition. You must state the cost of the new article to you and its proposed redemption value. In such written communication, you shall advise the Director of your current average redemption value per unit of cost of the premium articles. You may not add such articles to your list until the Director has advised you, in writing, of his approval.

(3) If you wish to abandon the practice of redeeming with premium articles the coupons you have distributed to your buyers, you must advise the Director, in writing, of your intention. In such cases, you must further state the effect of such abandonment upon your business and the adjustments required in your ceiling prices to compensate for the withdrawal of your coupon exchange plan. You may not abandon your exchange program until the Director has advised you, in writing, of his approval.

SEC. 5. Definitions. If you purchase the premium article from another manufacturer, "cost of premium" shall include only the delivered cost to you of the premium product. If you manufacture the premiums article, "cost of premium" shall include only such labor and material costs as enter directly into the product. This term shall not include advertising, factory, administrative or selling expenses, or any indirect expense.

Effective date: This supplementary regulation shall become effective May 9, 1951.

NOTE: The record keeping and reporting requirements of this Supplementary Regula-

tion have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5845; Filed, May 4, 1951;
10:39 a. m.]

[General Ceiling Price Regulation, Supplementary Regulation 26]

GCPR, SR 26—ADJUSTMENT OF CEILING PRICES OF COMMODITIES SOLD UNDER SPECIAL DEAL

Pursuant to the Defense Production Act of 1950 (Public Law 774, 81st Cong.) Executive Order 10161 (15 F. R. 6105), and Economic Stabilization Agency General Order No. 2 (16 F. R. 738), this Supplementary Regulation No. 26 to the General Ceiling Price Regulation (16 F. R. 809) is hereby issued.

STATEMENT OF CONSIDERATIONS

In a few instances manufacturers and wholesalers during the base period for the General Ceiling Price Regulation had in effect special deals of various sorts, under which sales were temporarily made at a lower price than the one theretofore prevailing. For example, the necessity for immediate capital might have forced liquidation of inventory at less than normal prices or advertising or promotional considerations might have led to the adoption of a reduced price for a temporary period. Sellers affected by such deals find their prices frozen at an abnormally reduced level. Since the special low price so established is, in many instances, too low to permit them to operate at a profit and was intended as a purely temporary measure, the result has been that sellers in this category are permanently prevented from resuming their operations. Today's regulation provides relief from this situation. It provides that manufacturers and wholesalers whose prices were frozen under special deals may revert to the prices which were in effect prior to such deal.

It is not intended to permit price increases in instances where the price reduction which was in effect during the base period was predicated upon competitive factors and was not intended to be temporary. A special deal is defined as one which was intended to have a duration of not more than 123 days. A manufacturer or wholesaler who wishes to claim the benefits of the regulation is required to submit to the Office of Price Stabilization information which substantiates the temporary character of the deal. In no event will sellers whose present ceiling prices are the result of a special deal be permitted to establish prices higher than those which were in effect prior to the beginning of the deal.

This regulation provides substantially the same kind of relief to persons involved in special deals as was given by section 4 (b) of the General Maximum Price Regulation issued by the Office of Price Administration. As was done there, provision is made for adjusting the ceiling price of any resellers of a com-

modity whose ceiling prices under the General Ceiling Price Regulation were affected by a special deal so that such resellers will not be caught in a squeeze. However, most retailers of commodities which were the subject of special deals by the manufacturer or wholesaler are already protected against that possibility by Ceiling Price Regulation No. 7 which will automatically give them substantially their normal margin on the increased cost occasioned by their suppliers' resumption of his former price.

The reporting requirements imposed by the Office of Price Administration have been eliminated from this regulation; the only report required is the initial application by the manufacturer or wholesaler to the Office of Price Stabilization for permission to adjust his ceiling price to the level prevailing prior to the special deal.

The number of commodities which it is anticipated will be affected by this regulation is very small since the situations in which it is applicable are exceedingly limited.

REGULATORY PROVISIONS

Sec.

1. What this regulation does.
2. What a special deal is.
3. How to obtain an adjustment.
4. Order of adjustment.

AUTHORITY: Sections 1 to 4 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply Title IV, Pub. Law 774, 81st Cong., E. O. 10161, Sept. 9, 1950, 15 F. R. 6105; 3 CFR, 1950 Supp.

SECTION 1. What this regulation does. This regulation permits ceiling prices established under the General Ceiling Price Regulation for manufacturers and wholesalers to be adjusted if they are abnormally low because of a "special deal" in effect during the period from December 19, 1950 to January 25, 1951.

SEC. 2. What a special deal is. A "special deal" means a reduction in the price of a commodity from the price last in effect prior to the day the special deal started. The reduction must have been announced and intended to be in effect for a period of time not exceeding 123 days. Offers of free goods, combination sales, increased quantities and additional discounts are all reductions in price.

SEC. 3. How to obtain an adjustment. If you are a manufacturer or wholesaler and your ceiling price for any commodity under the General Ceiling Price Regulation is the result of a special deal, you may apply for a price adjustment permitting you to establish as your ceiling price for that commodity the price last in effect prior to the special deal. The application may also request an adjustment in the ceiling price for resellers of the commodity if the ceiling price of such re-sellers is established under the General Ceiling Price Regulation and is affected by the special deal. Your application, which should be sent to the Office of Price Stabilization, Washington, 25, D. C., should contain the following information:

- (a) The ceiling prices for the commodity affected by the special deal;
- (b) A description of the special deal which should include its terms, the classes of purchasers affected, and

copies of price lists, advertisements or announcements used in connection with it:

(c) The prices last in effect for the commodity before the special deal, and copies of price lists, advertisements or announcements showing such prices.

SEC. 4. Order of adjustment. If the Office of Price Stabilization finds that you are entitled to an adjustment of your ceiling price under this regulation, it will issue a letter order to you establishing as your ceiling price the price last in effect prior to the beginning of the special deal. The order may make provision for appropriate notification to your purchasers of the terms of the adjustment and of any corresponding adjustment in their ceiling price.

Effective date. This supplementary regulation to the General Ceiling Price Regulation shall become effective on May 4, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5846; Filed, May 4, 1951;
10:39 a. m.]

Chapter VI—National Production Authority, Department of Commerce

[CMP Regulation 1]

CMP REG. 1—BASIC RULES OF THE CONTROLLED MATERIALS PLAN

GENERAL

This regulation is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950. In the formulation of this regulation, there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations. However, consultation with representatives of all industries affected in advance of the issuance of this regulation has been rendered impracticable because the regulation affects almost all industries.

EXPLANATORY PROVISIONS

Sec.

1. What this regulation does.
2. Definitions.
3. General production schedule and allotment procedure.
4. Statements of requirements.
5. Applications for authorized production schedules and allotments.

AUTHORIZED PRODUCTION SCHEDULES

6. How production schedules are authorized.
7. Reconciliation of conflicting schedules.
8. Rejection of schedules in excess of capacity.
9. Meeting authorized production schedules.

ALLOTMENTS AND DELIVERY ORDERS FOR CONTROLLED MATERIALS

10. How allotments are made.
11. Designation and use of allotment numbers.
12. Allotments by consumers.
13. How to cancel or reduce allotments.
14. Transfer of allotments.
15. Special provisions regarding manufacturers and distributors of class A products.
16. Alternative procedure for simultaneous allotments.

Sec.

17. Restrictions on placing authorized controlled material orders, and on use of allotments and materials.

18. Adjustments for changes in requirements.

19. How to place orders with controlled materials producers and distributors.

CONTROLLED MATERIALS PRODUCERS

20. Rules applicable to controlled materials producers.

21. Production requirements of controlled materials producers.

GENERAL PROVISIONS

22. Applicability of other regulations and orders.

23. Records and reports.

24. Applications for adjustment or exception.

25. Communications.

26. Violations.

AUTHORITY: Sections 1 to 26 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply sec. 101, Pub. Law 774, 81st Cong.; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105, 3 CFR, 1950, Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61.

EXPLANATORY PROVISIONS

SECTION 1. What this regulation does. The purpose of this regulation is to define rights and obligations under the Controlled Materials Plan. It explains how production schedules are authorized for manufacturing operations and how materials are obtained to complete such production schedules. This regulation and other CMP regulations to be issued from time to time make effective the "Controlled Materials Plan," a general description of which was issued by the National Production Authority, for informational purposes only, on April 13, 1951. In case of any inconsistency between such announcement, or any other descriptive literature which may be issued from time to time, and any CMP regulation, the provisions of the latter shall govern. Other CMP regulations cover, or will cover, inventory controls; preference status of delivery orders; deliveries of controlled materials by distributors; maintenance, repair, and operating supplies; construction; and additional matters. This regulation will also be supplemented from time to time by the issuance of procedures, forms, interpretations, directions, and instructions.

SEC. 2. Definitions. As used in this regulation and any other CMP regulation (unless otherwise indicated):

(a) "Person" means any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States or any other government.

(b) "NPA" means the National Production Authority.

(c) "Controlled material" means steel, copper, and aluminum, in the forms and shapes indicated in Schedule I of this regulation.

(d) "Controlled Materials Division" means the Iron and Steel Division, the Copper Division, or the Aluminum and Magnesium Division of NPA.

(e) "Industry Division" means the Division or other unit of NPA which is charged with supervision over the operations of the producers of particular products.

(f) "Claimant Agency" means any Government agency or subdivision thereof designated as such by the Defense Production Administration.

(g) "Prime consumer" means any person who receives an allotment of controlled material from a Claimant Agency or an Industry Division.

(h) "Secondary consumer" means any person who receives an allotment of controlled material from a person other than a Claimant Agency or an Industry Division.

(i) "Allotment" means (1) an authorization by the Requirements Committee of the Defense Production Administration, of the amount of controlled materials which a Claimant Agency may receive and/or allot during a specified period, or (2) an authorization by the Requirements Committee of the Defense Production Administration, of the amount of controlled materials which an Industry Division may allot during a specified period, or (3) an authorization by a Claimant Agency or an Industry Division, of the amount of controlled materials which may be received and/or allotted by one of its prime consumers during a specified period.

(j) "Class A product" means any product which is not a class B product (as defined in paragraph (k) of this section), and which contains any controlled material, fabricated or assembled beyond the forms and shapes specified in Schedule I of this regulation, other than any controlled material which may be contained in class B products incorporated in it.

(k) "Class B product" means any product designated as such in the "Official CMP Class B Product List" issued by NPA, as the same may be modified from time to time.

(l) "Program" means a statement of the amounts of an item or class of items to be provided in specified periods of time.

(m) "Authorized program" means a program specifically approved by the Requirements Committee of the Defense Production Administration.

(n) "Production schedule" means a statement of the amounts of an item or class of items to be produced by an individual consumer in specified periods of time.

(o) "Authorized production schedule" means a production schedule specifically approved by a Claimant Agency or by an Industry Division with respect to a prime consumer, or specifically approved by a prime or secondary consumer with respect to a secondary consumer.

(p) "Delivery order" means any purchase order, contract, shipping, or other instruction calling for delivery of any material or product on a particular date or dates or within specified periods of time.

(q) "Authorized controlled material order" means any delivery order for any controlled material (as distinct from a product containing controlled material) which is placed pursuant to an allotment

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as provided in section 19 of this regulation or which is specifically designated to be such an order by any regulation or order of NPA.

SEC. 3. General production schedule and allotment procedure. (a) Each Claimant Agency or Industry Division shall authorize production schedules of prime consumers pursuant to authorized programs. Each prime consumer who has an authorized production schedule shall, pursuant thereto, authorize production schedules of secondary consumers producing class A products for it; and each secondary consumer who has an authorized production schedule shall, pursuant thereto, authorize production schedules of secondary consumers producing class A products for it.

(b) Each Claimant Agency or Industry Division shall make allotments to prime consumers, for the purpose of fulfilling related authorized production schedules, pursuant to allotments which it has received. Each prime consumer who has received an allotment shall, pursuant thereto, make allotments to secondary consumers producing class A products for it, to fulfill related authorized production schedules; and each secondary consumer who has received an allotment shall, pursuant thereto, make allotments to secondary consumers producing class A products for it, to fulfill related authorized production schedules.

(c) No person who has received an authorized production schedule shall produce more than the quantity of the particular product or products provided for in such authorized production schedule, except where expressly permitted, and to the extent and under the conditions specified, by any other regulation or order of NPA.

(d) Nothing in this regulation shall be interpreted to prohibit the production of any product by a person who does not have an authorized production schedule for such product: *Provided, however,* That such production must comply with the provisions and limitations of all applicable regulations and orders of NPA.

SEC. 4. Statements of requirements. (a) The basis for an allotment to a consumer shall be his actual requirements for controlled materials in connection with the fulfillment of an authorized production schedule, after taking inventories into account to the extent required by CMP Regulation No. 2. A statement of requirements is to be furnished only when requested. Such statement is ordinarily submitted as an application for allotment or a bill of materials.

(b) An application for allotment includes only (1) the quantities of controlled materials required by the submitting consumer for his own production, and (2) the quantities of controlled materials required by his secondary consumers supplying class A products to him for incorporation in his product.

(c) A bill of materials is a statement of the total amounts of materials (including controlled materials) required for physical incorporation in one unit or a specified number of units of a given product.

(d) When a consumer who has furnished a bill of materials or other state-

ment of requirements ascertains that he has substantially overstated his requirements or those of his secondary consumers for any material or product, he shall report such error immediately to the person to whom the statement of requirements was furnished.

(e) If any consumer receives any statement of requirements which he knows or has reason to believe to be substantially excessive, with respect to controlled materials, he shall withhold any allotment based thereon in an amount sufficient to correct such excess and shall report the facts immediately to the appropriate Claimant Agency or Industry Division.

SEC. 5. Applications for authorized production schedules and allotments. (a) Production schedules may be authorized and related allotments made on the basis of information furnished by applications on Form CMP-4A and Form CMP-4B.

(b) Any producer of class A products, upon the request of a Claimant Agency or of a consumer for whom he produces class A products, shall furnish to such Claimant Agency or consumer, the information called for in Form CMP-4A. Such information shall be submitted on Form CMP-4A or in such other manner as may be prescribed.

(c) Any producer of class B products which are designated as class B products for which Form CMP-4B applications are required, in the "Official CMP Class B Product List" issued by NPA, as the same may be modified from time to time, shall furnish the information called for in Form CMP-4B by submitting such form to the appropriate Industry Division or Claimant Agency (as indicated in such list). NPA may request any producer of a class B product not so designated to furnish such information on such form.

(d) Any producer of controlled materials may apply for an allotment as provided in section 21 of this regulation.

AUTHORIZED PRODUCTION SCHEDULES

SEC. 6. How production schedules are authorized. (a) A production schedule for each prime consumer producing a class A product pursuant to an authorized program will be authorized by the appropriate Claimant Agency on such form as may be prescribed. A Claimant Agency may, in particular cases, authorize a production schedule through an Industry Division.

(b) A production schedule for each secondary consumer producing a class A product shall be authorized by the consumer for whom such class A product is to be produced, pursuant to an authorized production schedule, on such form as may be prescribed. A consumer having several authorized production schedules bearing the same allotment number may, pursuant thereto, authorize a single production schedule for a secondary consumer.

(c) A production schedule for each consumer producing a class B product pursuant to an authorized program will be authorized by the appropriate Industry Division or Claimant Agency on such form as may be prescribed.

(d) A consumer receiving allotments from several persons shall obtain separate authorized production schedules from each.

(e) Except where otherwise specifically provided by NPA, no person shall authorize a production schedule unless at the same time he makes an allotment as provided in section 10 of this regulation, and no person shall make an allotment unless at the same time he authorizes a related production schedule as provided in this section.

(f) When the production schedule of a consumer is authorized and a related allotment is made to him, a DO rating shall be assigned or applied to such schedule by the person authorizing the production schedule, for use in accordance with the provisions of CMP Regulation No. 3.

SEC. 7. Reconciliation of conflicting schedules. In any case where, for any reason, a manufacturer of class A or class B products is unable to fulfill conflicting authorized production schedules which he has accepted from different persons, he shall, if the conflict involves only schedules relating to a single Claimant Agency, report immediately to that Claimant Agency for instructions. In all other cases involving conflicting authorized production schedules he shall report immediately to the appropriate Industry Division or Industry Divisions for instructions.

SEC. 8. Rejection of schedules in excess of capacity. A prime or secondary consumer shall reject an authorized production schedule for a class A or class B product to be manufactured by him which calls for delivery or deliveries after June 30, 1951, if he does not expect to be able to fulfill the same by the specified delivery date or dates. If the person whose order is rejected is unable to find another manufacturer who will accept it, he shall report the facts to the appropriate Claimant Agency or Industry Division. NPA may from time to time issue directives requiring individual manufacturers to reschedule or rearrange their production and/or delivery schedules.

SEC. 9. Meeting authorized production schedules. (a) Each consumer who has accepted an authorized production schedule shall fulfill the same unless prevented by circumstances beyond his control. In the event he cannot fulfill such schedule on the specified delivery date or dates, he shall promptly notify the person from whom he received it stating the reasons therefor.

(b) No consumer who has accepted an authorized production schedule shall exceed such schedule in any quarter with the use of the related allotment and DO rating, except that (1) an authorized production schedule may be exceeded in any quarter to the extent necessary to make up for a failure to meet such schedule in any prior quarter, (2) production authorized for any quarter may be completed at any time after the fifteenth of the month preceding such quarter and, (3) where a delivery order calls for deliveries, in successive months, of Class A products in quantities which are less than the minimum practicable production

quantity, and compliance with monthly delivery dates would result in substantial interruption of production and consequent interference with production to fill other delivery orders, the consumer may produce (and his customer may order and accept) in the first or a subsequent month the minimum practicable quantity which may be made without such interference.

ALLOTMENTS AND DELIVERY ORDERS FOR CONTROLLED MATERIALS

SEC. 10. How allotments are made. (a) Each Claimant Agency, Industry Division, or consumer authorizing a production schedule as provided in section 6 of this regulation shall concurrently make a related allotment, pursuant to allotments which it has received, to the consumer whose production schedule has been authorized, on such form as may be prescribed.

(b) The allotment shall specify the quantities and the kinds of controlled materials needed for delivery in specified calendar quarters to complete the related authorized production schedule. Allotments shall be made in terms of (1) carbon steel (including wrought iron), (2) alloy steel (except stainless steel), (3) stainless steel, (4) copper and copper-base alloy brass mill products, (5) copper wire mill products, (6) copper and copper-base alloy foundry products and powder, and (7) aluminum, in each case without further breakdown.

(c) The allotment shall be identified by an allotment number as provided in section 11 of this regulation.

(d) Advance allotments by Claimant Agencies or Industry Divisions to prime consumers may be made within such limits as may be specified by the Requirements Committee of the Defense Production Administration. Prime consumers receiving such advance allotments shall, in turn, make advance allotments to their secondary consumers, and secondary consumers shall make advance allotments, in the same manner as in the case of regular allotments, but no consumer shall make any allotment before receiving his own allotment.

(e) A Claimant Agency, Industry Division, or consumer may make allotments only in the same kinds of controlled materials in which it has received its allotment.

SEC. 11. Designation and use of allotment numbers. (a) Allotments shall be identified by an allotment number consisting of a Claimant Agency letter symbol and one digit designating the authorized program of such Claimant Agency. In cases where a Claimant Agency is not involved, the appropriate symbol designated by any NPA regulation or order as a CMP allotment symbol shall be used. For example, in the case of maintenance, repair and operating supplies, the symbol MRO shall be used as provided in CMP Regulation No. 5.

(b) Authorized controlled material orders shall show the related allotment number and the calendar quarter for which the allotment is valid. For example, a delivery order for controlled materials placed pursuant to an allotment identified by allotment number K-2

which is valid for the fourth quarter of 1951 shall be designated as follows: K-2-4Q51. The date or dates on which delivery is required must also be specified on such delivery order.

(c) Delivery orders for products and materials other than controlled materials required for completion of an authorized production schedule shall show the DO rating and the related allotment number, for example, DO-K-2. The date or dates on which delivery is required must also be specified on such delivery order.

SEC. 12. Allotments by consumers.

(a) Each prime consumer receiving an allotment may use that portion of the allotment which he requires to obtain controlled materials as such for his authorized production schedule, and shall allot the remainder to his secondary consumers producing class A products for him to cover their requirements for controlled materials for related authorized production schedules. Allotments by secondary consumers to secondary consumers supplying them shall be made in the same fashion. A secondary consumer producing class A products for several consumers shall obtain separate allotments from each.

(b) No consumer shall make any allotment in an amount which exceeds the related allotment received by him, after deducting all other allotments made by him and all orders for controlled materials placed by him pursuant to his related allotment.

(c) No consumer shall make any allotment in excess of the amount required, to the best of his knowledge and belief, to fulfill the related authorized production schedule of the secondary consumer to whom the allotment is made (including the schedules of any secondary consumers supplying the latter).

(d) Allotments for production of class B products shall only be made by appropriate Industry Divisions or by appropriate Claimant Agencies as specified in the "Official CMP Class B Product List," and no consumer shall accept any allotment from any other person for the production of class B products.

(e) No consumer who has received his allotment for an authorized production schedule shall place any delivery order for any class A product required to fulfill said schedule, unless concurrently therewith, he makes an allotment to the person with whom the order is placed, in the amount required by such person to fill said order: *Provided, however,* That if he purchases a class A product from a distributor under the conditions specified in section 15 of this regulation, he need make no allotment but must deduct the appropriate amount from his own allotment balance.

(f) A consumer may make an allotment to his secondary consumer on such form (including Form CMP-5 set forth in Schedule II of this regulation) as may be prescribed for the purpose. Allotments may be made by telegraphing or telephoning the information required by the appropriate form and confirming the same with such form, within 15 days.

SEC. 13. How to cancel or reduce allotments. A person who has made an allotment may cancel or reduce the same by notice in writing to the person to whom it was made. A person who has received an allotment may cancel or reduce the same by making an appropriate notation thereon and notifying the person from whom he received it. In either case, if an allotment received by a person is cancelled, he must cancel all allotments which he has made, and all authorized controlled material orders which he has placed, on the basis of the allotment; and, if an allotment received by a person is reduced, he must cancel or reduce allotments which he has made, or authorized controlled material orders which he has placed, to the extent that the same exceed his allotment as reduced. If and to the extent that cancellation or reduction is impracticable because of shipments already made to him pursuant to such allotment, he may use or dispose of controlled materials or class A products which he gets with such allotment in the manner provided in section 17 of this regulation.

SEC. 14. Transfer of allotments. (a) No consumer shall transfer or assign any allotment (as distinct from making an allotment) in any way unless: (1) delivery orders for class A products placed with him, in connection with which the allotment was made to him, have been transferred or assigned to another consumer; (2) the authorized production schedules of the respective consumers have been duly adjusted; and (3) the transfer or assignment is approved in writing by the person who made the allotment.

(b) Transfers or assignments of allotments may be made without complying with paragraph (a) of this section in connection with the transfer or assignment of a business as a going concern where the transferee continues to operate substantially the same business in the same plant. The transferee may use the allotment and ratings of the transferor but the transferee must notify NPA of the details of the transaction, giving the names of the persons involved and furnishing one extra copy of such notification for each authorized production schedule that he has received.

SEC. 15. Special provisions regarding manufacturers and distributors of class A products. (a) For the purposes of this section "distributor" means any person engaged in the business of buying and taking physical delivery of class A products which he does not manufacture and selling the same, for his own account, but only to the extent that he is so engaged.

(b) A distributor may buy and sell class A products without making or receiving allotments. A manufacturer of class A products selling them to a distributor may obtain an allotment for such manufacture from the appropriate Industry Division or Claimant Agency by submitting an application on Form CMP-4B, in the same manner as if they were class B products. If the manufacturer makes physical delivery directly

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to a distributor's customer, the latter (unless he is also a distributor) shall make an allotment directly to the manufacturer in the same manner and subject to the same conditions as if the distributor had no part in the transaction.

(c) A manufacturer of class A products who sells them for use as maintenance, repair, or operating supplies (except items purchased from him by a Claimant Agency and for which he has received an allotment) shall obtain allotments for such manufacture in the manner provided in paragraph (b) of this section. Applications pursuant to said paragraph (b) and this paragraph (c) may be combined in a single Form CMP-4B.

(d) Notwithstanding paragraph (a) of this section, a manufacturer who also sells purchased class A products to round out his line, which do not represent more than 10 percent of his estimated total sales receipts in a calendar quarter for which he files an application for allotment, shall be deemed the manufacturer of such products and not a distributor for purposes of this section.

SEC. 16. Alternative procedure for simultaneous allotments. A prime or secondary consumer who has several secondary consumers in different degrees of remoteness, may, at his option, authorize individual production schedules and make simultaneous direct allotments to all such secondary consumers of all degrees of remoteness. The person who is to make the allotment under this alternative procedure (the originating consumer) may request each supplier of all degrees of remoteness to furnish him directly with information regarding such supplier's requirements for controlled materials, and each such supplier shall comply with such request. If this procedure is followed, each supplier shall include in the information he furnishes to the originating consumer only his own requirements for controlled materials and not those of his suppliers. In no event shall a person who uses this alternative procedure make an allotment of more controlled materials than he has received. All the provisions of this regulation regarding authorized production schedules and allotments shall apply to the alternative procedure for simultaneous allotments, except as specifically provided in this section.

SEC. 17. Restrictions on placing authorized controlled material orders, and on use of allotments and materials. (a) In no event shall a consumer request delivery of any controlled material in a greater amount or on an earlier date than required to fulfill his authorized production schedule, or in an amount so large or on a date so early that receipt of such amount on the requested date would result in his having an inventory of controlled materials in excess of the limitations prescribed by CMP Regulation No. 2 or by any other applicable regulation or order of NPA. If the quantity of any controlled material required by a consumer is less than the minimum mill

quantity specified in Schedule IV of this regulation, and is not procurable from a distributor, he may accept delivery of the full minimum shown in such schedule.

(b) No consumer shall use an allotment, or any controlled material or class A product obtained pursuant to an allotment for any purpose except: (1) To fulfill the related authorized production schedule, or (2) to fulfill any of his other authorized production schedules for class A products, within the same plant or operating unit, which bear the same allotment number, or (3) to fulfill any of his other authorized production schedules, within the same plant or operating unit, for class B products which are in the same Product Class Code as shown in the "Official CMP Class B Product List" issued by NPA, or (4) to replace in inventory, controlled materials or class A products used to fulfill any of such authorized production schedules, subject to the provisions of CMP Regulation No. 2 or any other applicable regulation or order of NPA. Where an allotment made for one schedule is used in fulfilling another schedule as provided in this paragraph, no charge need be made against the allotment account of the second schedule, but an appropriate record must be made, on the allotment accounts or otherwise, describing the circumstances.

(c) If a consumer's needs for a controlled material or class A product are reduced before he has ordered or received delivery of them he must immediately return the allotment as explained in section 18 of this regulation unless he uses the allotment for the purposes permitted in paragraph (b) of this section. If he has already placed authorized controlled material orders or delivery orders for class A products, he must cancel them. If cancellation of such orders is impracticable because of shipments already made, he may accept delivery of the controlled materials and class A products, in which case his use of them is covered by paragraph (d) of this section.

(d) If it develops, after a consumer has received delivery of controlled materials or class A products, that he cannot use them for a purpose permitted under paragraph (b) of this section, he may use or dispose of them subject to restrictions of other orders or regulations of NPA.

(e) If, before using or disposing of controlled materials or class A products in a way permitted by this section, the consumer receives instructions from NPA as to disposition or use of the same, he must comply with such instructions. Also, he must comply with any instructions he receives from a Claimant Agency with respect to his use of controlled materials or class A products which he obtained by use of an allotment from that Claimant Agency, in any program of the same Claimant Agency, or with respect to their sale to any other person for use in a program of the same Claimant Agency, subject always to whatever rights he may have to reimbursement.

(f) A consumer need not segregate inventories of controlled materials or class

A products which he obtained by use of his allotments, even though different allotment numbers are used in ordering them, nor does he have to earmark them for a particular schedule. Although a consumer must charge the appropriate allotment account when placing an authorized controlled material order or making an allotment, he may keep all controlled materials and class A products received in a common inventory and in withdrawing from inventory he does not have to charge the withdrawal against the allotment account. A consumer who is operating under several authorized production schedules need not maintain separate records of the production obtained from the allotment received for each schedule if the records which he normally keeps show that his use of material for his respective schedules is substantially proportionate to the amounts of material allotted for each, and that his aggregate production of any product does not exceed the aggregate of the production schedules authorized for that product.

SEC. 18. Adjustments for changes in requirements. (a) If a consumer's requirements for controlled materials or class A products needed to fulfill an authorized production schedule are increased after he receives his allotment, he may apply for an additional allotment to the person who made the allotment for that schedule.

(b) If a consumer finds that he has been allotted substantially more than he needs, he must return the excess. As of the first of each month, each consumer must check up on his anticipated requirements for the quarter and determine whether he has been allotted more than he anticipates he needs. If he has, he must return the excess by the tenth of the month. He need not take a physical inventory for this purpose, but must merely check up on the effect of known changes in his requirements or errors which he has discovered in his statement of requirements.

(c) The return of an unneeded allotment must be made to the person from whom the allotment was received on such form as may be prescribed. If it is impracticable to obtain the prescribed form, the return may be made by letter setting forth the facts.

(d) In those cases where it is impracticable for a secondary consumer to return an allotment to the person from whom he received it, he may make the return directly to the appropriate Claimant Agency or Industry Division.

SEC. 19. How to place orders with controlled materials producers and distributors. (a) A delivery order placed with a controlled materials producer or a controlled materials distributor (as defined in CMP Regulation No. 4) for controlled material shall be deemed an authorized controlled material order only if (1) it contains an allotment number and the calendar quarter for which the allotment is valid, as provided in section 11 of this regulation, and complies with the provisions of this section, or (2) it is specifically designated as an author-

ized controlled material order by any regulation or order of NPA.

(b) A consumer who has received an allotment may place an authorized controlled material order with any controlled materials producer or distributor unless otherwise specifically directed. An allotment to a prime consumer may include an instruction to place delivery orders for controlled materials with one or more designated controlled materials producers. In such event the consumer shall use the allotment only to obtain controlled materials from the designated controlled materials producer or producers or to make allotments to secondary consumers, designating therein only producers named in the allotment received by him. Except as required by the allotment which he has received, no consumer shall impose any such restriction in any allotment made by him.

(c) Every authorized controlled material order must contain a certification in addition to an allotment number. Unless another form of certification is specifically prescribed by an applicable order or regulation of NPA, such certification shall be in the following form: "Certified under CMP Regulation No. 1," and shall be signed manually or as provided in NPA Reg. 2. This certification shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place an authorized controlled material order under the provisions of this regulation to obtain the controlled materials covered by the delivery order.

(d) An authorized controlled material order must be in sufficient detail to permit entry on mill schedules and must be received by the controlled materials producer at such time in advance as is specified in Schedule III of this regulation, or at such later time as the controlled materials producer may find it practicable to accept the same, provided that no controlled materials producer shall discriminate between customers in rejecting or accepting late orders.

(e) A delivery order for controlled materials placed by a consumer before he has received his authorized production schedule and allotment, calling for delivery after June 30, 1951, may be converted into an authorized controlled material order, after receipt of such schedule and allotment, either by furnishing a revised copy of the order conforming to the requirements of this section or by furnishing in writing information clearly identifying the order and bearing the certification required by paragraph (c) of this section.

(f) No person shall place an authorized controlled material order unless the amount of controlled material ordered is within the related allotment received by him, after deducting all allotments made by him and all orders for controlled material placed by him pursuant to the same allotment, or unless he is expressly authorized to place such an order by any applicable regulation or order of NPA.

(g) Authorized controlled materials orders shall take precedence over other orders for controlled materials to the ex-

tent provided in CMP Regulation No. 3. A delivery order for controlled materials not covered by an allotment shall not be combined with an authorized controlled material order. However, such orders shall be combined if the total of both does not exceed the minimum mill quantity specified in Schedule IV of this regulation, provided that the controlled materials involved are not procurable from a distributor. Where such orders are combined, the portion covered by allotment must be specifically identified by the appropriate allotment number and such delivery order must contain the certification provided in paragraph (c) of this section.

CONTROLLED MATERIALS PRODUCERS

SEC. 20. Rules applicable to controlled materials producers. (a) Each controlled materials producer shall comply with such production and other directives as may be issued from time to time by NPA and with the provisions of all other applicable regulations and orders of NPA regarding production and delivery of controlled materials.

(b) Each controlled materials producer shall accept all (1) authorized controlled material orders, except as provided in this section, (2) orders for controlled materials bearing a DO rating calling for delivery before October 1, 1951, except as provided in this section, and (3) orders which he is required to accept pursuant to NPA directive: *Provided, however,* That nothing in this section shall prevent any controlled materials producer from accepting any other orders for controlled materials to the extent that such acceptance would be in conformity with the provisions of this section and all other applicable regulations and orders of NPA.

(c) A controlled materials producer shall be required to accept authorized controlled material orders, orders for controlled materials bearing a DO rating and all other orders for controlled materials only in conformity with the appropriate quantity limitations and other conditions specified in NPA Order M-1 (steel), NPA Order M-5 (aluminum), NPA Order M-6 (steel), and NPA Order M-11 (copper), or in any other applicable regulation or order of NPA.

(d) A controlled materials producer may reject orders for less than the minimum mill quantities specified in Schedule IV of this regulation, but shall not discriminate between customers in rejecting or accepting such orders.

(e) In any case where a controlled materials producer is of the opinion that the filling of an order which he is required to accept pursuant to this section would substantially reduce his over-all production owing to the large or small size of the order, unusual specifications, or otherwise, he shall notify the appropriate Controlled Materials Division setting forth the pertinent facts. NPA may direct that the order be placed with another supplier or take other appropriate action.

(f) To the extent necessary to make deliveries on time with respect to orders

which he is required to accept pursuant to this section, a controlled materials producer must reject or defer any orders which he is not required to accept pursuant to this section: *Provided, however,* That if at the time the order is to be deferred it is scheduled for delivery within less time than the "lead times" specified in Schedule III of this regulation, he need not defer such order if in so doing his production or operations would be stopped or interrupted in a way which would cause a substantial loss of total production or a substantial delay in operation.

(g) A controlled materials producer shall make delivery on each authorized controlled material order as close to the requested delivery date as is practicable. He may make delivery during the 15 days prior to the requested delivery month, but not before then, provided such delivery does not interfere with delivery on other authorized controlled material orders, and provided production to meet such delivery would not violate any production directive. If a producer, after accepting an order within the limits provided in this section finds that, due to contingencies which he could not reasonably have foreseen, he is obliged to postpone the delivery date, he must promptly advise his customer of the approximate date when delivery can be scheduled, and keep his customer advised of any changes in that date. Delivery of any such carry-over order must be scheduled and made in preference to any order originally scheduled for such later date. When the new date for delivery on a carry-over order falls within a later quarter than that indicated on the original order, the producer must make delivery on the basis of the original order even if that order shows that the allotment was valid for delivery in a quarter earlier than the one in which delivery is actually made.

(h) If a controlled materials producer takes controlled materials which he has produced and processes them into a form other than a controlled materials form, or if he uses controlled materials which he has produced to make a product or a material other than a controlled material, such processing or use shall be considered a delivery for the purposes of this section.

(i) If a controlled materials producer is not required to or is unable to accept an authorized controlled material order for delivery in the month requested because of the provisions of this section, but has open space available in either of the two following months, he must accept and schedule the order for delivery as early as possible during the two following months and must promptly notify the customer of the proposed delivery date and tell him that the order has been accepted, subject to written confirmation within 7 days. If the customer does not have written confirmation of the new delivery date in the producer's hands within 7 days after the date on which the notice of tentative acceptance was sent, the producer may cancel the order.

RULES AND REGULATIONS

(j) If the controlled material delivered pursuant to an authorized controlled material order varies from the exact amount specified in such order, the making and acceptance of such delivery shall not be deemed a violation of this regulation by the controlled materials producer or his customer, provided such variation does not exceed the commercially recognized shipping tolerance, or allowance for excess or shortage.

(k) An authorized controlled material order shall not constitute an allotment of controlled material to the controlled materials producer with whom it is placed. If a controlled materials producer requires delivery of controlled materials from other controlled materials producers, to be processed by him and sold to his customers in another form or shape constituting a controlled material, such delivery may be made or accepted only pursuant to a specific instruction of NPA, or pursuant to allotment as provided in section 21 of this regulation.

SEC. 21. Production requirements of controlled materials producers. This section provides the procedures under which controlled materials producers may obtain production materials required in the production of controlled materials. For the purposes of this section, "production material" means, with respect to any controlled materials producer, any material (including controlled material) or product which will be physically incorporated into his product, and includes the portion of such material normally consumed or converted into scrap in the course of processing. It includes containers and packaging materials required to make delivery of the materials he produces, and also chemicals used directly in the production of the materials he produces. It does not include any items purchased by him as manufacturing equipment, or for maintenance, repair, or operating supplies as defined in CMP Regulation No. 5.

(a) Except in those cases handled by directives pursuant to section 20 (a) of this regulation, if a controlled materials producer requires delivery, after June 30, 1951, of controlled materials or of class A products to be incorporated in a controlled material produced by him, he may apply for an allotment on Form CMP-4B or such other form as may be prescribed for the purpose. Such applications shall be sent to the Controlled Materials Division charged with supervision over the operations of the controlled materials producer, even if a different controlled material is involved.

(b) Allotments will be made to controlled materials producers applying under paragraph (a) of this section in the manner provided in section 10 of this regulation, except that in lieu of authorized production schedules, the controlled materials producer will receive from his

Controlled Materials Division production instructions or authorizations. Controlled materials producers who have received allotments pursuant to this paragraph may place authorized controlled material orders in accordance with the provisions of section 19 of this regulation.

(c) When a Controlled Materials Division has made an allotment to a controlled materials producer, a DO rating shall be assigned to the related production instructions or authorizations for use in obtaining production materials, other than controlled materials, in accordance with the provisions of CMP Regulation No. 3.

GENERAL PROVISIONS

SEC. 22. Applicability of other regulations and orders. Nothing in this regulation shall be construed to relieve any person from complying with all other applicable regulations and orders of NPA. In case compliance by any person with the provisions of any such regulation or order would prevent fulfillment of an authorized production schedule, he shall immediately report the matter to the appropriate Industry Division, and to the Claimant Agency whose schedule is affected. NPA will thereupon take such action as is deemed appropriate, but unless and until otherwise expressly authorized or directed by NPA, such person shall comply with the provisions of such regulation or order.

SEC. 23. Records and reports. (a) Each consumer making or receiving any allotment of controlled materials shall maintain at his regular place of business accurate records of all allotments received, of procurement pursuant to all allotments, and of the subdivision of all allotments among his direct secondary consumers. Such records shall be kept separately by allotment numbers, pursuant to section 11 of this regulation, and shall include separate entries under each number for each customer, Claimant Agency, or Industry Division from whom allotments are received under such number, except as otherwise specifically provided in this regulation.

(b) Each consumer and each controlled materials producer shall retain for at least 2 years at his regular place of business all documents on which he relies as entitling him to make or receive an allotment or to deliver or accept delivery of controlled materials or class A products, segregated and available for inspection by representatives of NPA, or Claimant Agencies authorized by NPA, or filed in such manner that they can be readily segregated and made available for such inspection.

(c) The provisions of this regulation do not require any particular accounting method, provided the records maintained supply the information specified by this regulation and furnish an adequate basis for audit. Records may be retained in the form of microfilm or other photographic copies instead of the originals.

(d) Persons subject to this regulation shall maintain such records and submit such reports to NPA as it shall require, subject to the terms of the Federal Reports Act of 1942.

SEC. 24. Applications for adjustment or exception. (a) Any person subject to any provision of this regulation, or any other regulation, order, direction or other action under the Controlled Materials Plan, may file a request for adjustment, exception, or other relief upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. In examining requests claiming that the public interest is prejudiced, consideration will be given to the requirements of public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing submitted in triplicate, shall set forth all pertinent facts and the nature of the relief sought, and shall state the justification therefor.

(b) A producer of class A products making a large variety of items which are sold to many customers and whose allotments originate from several Claimant Agencies, may file a request to be treated as a producer of class B products. Such request shall be in writing submitted in triplicate, shall set forth all pertinent facts, and shall state the justification therefor.

SEC. 25. Communications. All communications concerning this regulation, except as otherwise specified in this regulation, shall be addressed to the National Production Authority, Washington 25, D. C., Ref: CMP Regulation No. 1.

SEC. 26. Violations. Any person who wilfully violates any provision of this regulation or any other regulation or order of the National Production Authority, or who wilfully conceals a material fact or furnishes false information in the course of operation under this regulation, is guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This regulation shall take effect on May 3, 1951.

NATIONAL PRODUCTION
AUTHORITY,
MANLY FLEISCHMANN,
Administrator.

SCHEDULED I—CONTROLLED MATERIALS

(See sections 2 (c) and 2 (j))

CARBON STEEL (INCLUDING WROUGHT IRON)¹

(a) Bar (including bar shapes).

Includes:

- Bar, hot-rolled projectile and shell quality.
- Bar, hot-rolled, other (including light shapes).
- Bar, reinforcing.
- Bar, cold-finished.
- Bar, tool steel.

(b) Sheet, strip (uncoated and coated).

Includes:

- Sheet, hot-rolled.
- Sheet, cold-rolled.
- Sheet, galvanized.
- Sheet, all other coated.
- Sheet, enameling.
- Strip, hot-rolled.
- Strip, cold-rolled.
- Strip, galvanized.
- Electrical sheet and strip.
- Tin mill black plate.
- Tin plate, hot-dipped.
- Ternes, special coated manufacturing.
- Tin plate, electrolytic.

(c) Plate.

(d) Structural shapes (heavy), piling.

(e) Pipe, tubing.

Includes:

- Standard pipe (including couplings).
- Oil-country goods (casings, tubular goods, couplings furnished by mill).
- Line pipe.
- Pressure tubing—seamless and welded.
- Mechanical tubing—seamless and welded.

(f) Wire, wire products.

Includes:

- Nails and staples.
- Barbed and twisted wire.
- Woven wire fence.
- Bale ties.

(g) Other mill forms and products (do not include forgings).

Includes:

- Ingots.
- Billets, projectile and shell quality.
- Blooms, slabs, other billets, tube rounds, sheet bars.
- Skelp.
- Wire rod.
- Rails.
- Joint bars (track).
- Tie plates (track).
- Track spikes.
- Wheels, rolled or forged (railroad).
- Axes (railroad).

(h) Castings (not including cast iron).

ALLOY STEEL² (EXCEPT STAINLESS STEEL)

(a) Bar, bar shapes.

Includes:

- Bar, hot-rolled projectile and shell quality.
- Bar, hot-rolled, other (including light shapes).
- Bar, cold-finished.
- Bar, tool steel.

¹ "Carbon steel (including wrought iron)" means any steel customarily so classified.² "Alloy steel" contains any one or more of the following elements in the following amounts: Manganese, maximum of range in excess of 1.65 percent. Silicon, maximum of range in excess of 0.60 percent. Copper, maximum of range in excess of 0.60 percent. Aluminum, chromium, cobalt, columbium, molybdenum, nickel, tantalum, titanium, tungsten, vanadium, zirconium, or any other alloying elements in any amount specified or known to have been added to obtain a desired alloying effect.

FEDERAL REGISTER

ALLOY STEEL—Continued

(b) Sheet, strip.

Includes:

- Sheet, hot-rolled.
- Sheet, cold-rolled.
- Sheet, galvanized.
- Strip, hot-rolled.
- Strip, cold-rolled.
- Electrical sheet and strip.

(c) Plate.

Includes:

- Rolled armor.
- Other.

(d) Structural shapes (heavy).

(e) Pipe, tubing.

Includes:

- Oil-country goods.
- Pressure tubing—seamless and welded.
- Mechanical tubing—seamless and welded.

(f) Wire.

(g) Other mill forms and products (do not include forgings).

Includes:

- Ingots.
- Billets, projectile and shell quality.
- Blooms, slabs, other billets, tube rounds, sheet bars.
- Wire rods.
- Rails.
- Wheels, rolled or forged (railroad).
- Axes (railroad).

(h) Castings.

STAINLESS STEEL³

(a) Seamless tubing.

(b) Other mill forms and products (do not include forgings).

Includes:

- Bar, bar shapes.

Includes:

- Bar, hot-rolled (including light shapes).

Bar, cold-finished.

Sheet, strip.

STAINLESS STEEL—Continued

Includes:

- Sheet, hot-rolled.
- Sheet, cold-rolled.
- Strip, hot-rolled.
- Strip, cold-rolled.

Plate.

Structural shapes (heavy).

Tubing (except seamless).

Wire, drawn.

Wire nails and staples.

Ingots, blooms, billets, tube rounds, sheet bars, wire rods.

(c) Castings.

COPPER AND COPPER-BASE ALLOY BRASS MILL PRODUCTS

Copper (unalloyed):

- (a) Bar, rod, shapes, wire (except electrical).
- (b) Sheet, strip, plate, rolls.
- (c) Pipe, tubing.

Copper-base alloy:

- (d) Bar, rod, wire, shapes.
- (e) Sheet, strip, plate, rolls.
- (f) Pipe, tubing.

COPPER WIRE MILL PRODUCTS

Includes: Wire and cable for electrical conduction only:

Bare and tinned.

Weatherproof.

Magnet wire.

Insulated building wire products.

Paper and lead power cable.

Paper and lead telephone cable.

Asbestos cable.

Portable and flexible cord and cable.

Communication wire and cable.

Shipboard cable.

Automotive and aircraft wire and cable.

Insulated power cable products.

Signal and control cable.

COPPER AND COPPER-BASE ALLOY FOUNDRY PRODUCTS AND POWDER

Includes:

Castings.

Powder.

ALUMINUM

Rolled bar, rod, wire, structural shapes.

Extruded bar, rod, shapes, tubing (including drawn tubing).

Sheet, plate, foil (including strip).

Powder (atomized or flake, including paste).

Pig or ingot, granular or shot.

SCHEDULE II—SHORT FORM OF ALLOTMENT

(See section 12 (f))

Controlled material	Allotment (specify short tons or pounds)			
	Quarter 1951	Quarter 1951	Quarter 1951	Quarter 1951
Carbon steel (including wrought iron)				
Alloy steel (except stainless steel)				
Stainless steel				
Copper and copper-base alloy brass mill products				
Copper wire mill products				
Copper and copper-base alloy foundry products and powder				
Aluminum				
Allotment No. ....	.....	.....	.....	.....
	Signature and title			
	Dates.....			
Above allotments are made for use in filling this delivery order in compliance with CMP Regulation No. 1.				

INSTRUCTIONS FOR USE OF SHORT FORM OF ALLOTMENT—FORM CMP-5

The above short form of allotment may be used by any consumer who has received an allotment for the purpose of making an allotment to a secondary consumer producing Class A products for him. The short form of allotment must be either placed on or physically attached to the delivery order calling for delivery of the Class A products. If it is attached, the delivery order number or other identification must be indicated on the form.

SCHEDULE III—TIME FOR PLACING AUTHORIZED CONTROLLED MATERIAL ORDER*

(See sections 19 (d) and 20 (f))

Name of product	Number of days in advance of first day of month in which shipment is required	Carbon ¹	Low alloy ²	Stain- less ³	Full alloy ⁴	Lead time	Definition
Steel (including wrought iron):							
Ingots	45	75	75	75	75		AISI M50, M43, M36,
Billets, projectiles and shell quality	45	75	75	75	75		AISI M27, M22, M19,
Blooms, slates, billets (except projectile and shell quality)	45	75	75	75	75		AISI M17, M16, M14, and oriented.
Tube rounds	45	75	75	75	75		
Sheet bars	45	75	75	75	75		
Skelp	45	75	75	75	75		
Wire rods	45	75	150	90	75		
Structural shapes (heavy)	45	75	75	75	90		
Steel plates	45						
Plates—rolled and forged (railroad)	45	75	90	75	75		
Plates—other	45						
Rails—standard (over 60 pounds)	45						
Rails—all other	45						
Joint bars (track)	45						
Tie plates (track)	45						
Track spikes	45						
Wheels, rolled and forged (railroad)	45						
Axles (railroad)	45						
Bars—hot-rolled, projectiles and shell quality (includes all projectiles and components such as fuses, starters, and base plugs)	45		75		775		
Bars—hot-rolled, other (including light shapes)	45		75		90		
Bars—reinforcing	45						
Bars—cold-drawn	45						
Bars—tool steel	45						
Standard pipe (including couplings)	45						
Oil-country goods	45						
Liner pipe	45						
Mechanical tubing (seamless and welded)	45						

*“Carbon steel (including wrought iron)” means any steel customarily so classified.

¹“Low-alloy high-strength steel” means only the projectile grades produced and sold for this purpose.
²“Stainless steel” means heat and corrosion resisting steel containing 10 percent or more of chromium either with or without nickel, molybdenum, or other elements. Stainless clad steel is considered to be solid stainless. AISI types 501 and 502 and other alloy steel containing 4 percent to but not including 10 percent chromium, which previously was considered as stainless steel should now be included as full-alloy steel.
³“Full-alloy steel” means any alloy steel not classified as “stainless” or “low-alloy high-strength.” “Alloy steel” contains any one or more of the following elements in the following amounts: Manganese, maximum of range in excess of 1.65 percent; Silicon, maximum of range in excess of 0.60 percent; Copper, maximum of range in excess of 0.60 percent; Aluminum, chromium, cobalt, columbium, titanium, vanadium, zirconium, or any other alloying elements in any amount specified or known to have been added to obtain a desired alloying effect.

⁴Applies to special rolled shapes including angles and channels.
⁵Subject to negotiation between mill and its customer. If no acceptable arrangements are worked out, NPA should be notified.

⁶Inches bars—tonnals for piercing.

⁷If annealed or heat-treated, add an additional 15 days.
⁸If cold-drawn or cold-finished, add an additional 15 days.

⁹If cold-drawn or cold-finished, 60 days; for welded tubing, 75 days.

SCHEDULE III—TIME FOR PLACING AUTHORIZED CONTROLLED MATERIAL ORDER—Continued
 (See sections 19 (d) and 20 (f))

Name of product	Number of days in advance of first day of month in which shipment is required	Carbon ¹	Low alloy ²	Stain- less ³	Full alloy ⁴	Lead time	Definition
Steel (including wrought iron)—Continued							
Pressure tubing (seamless and welded)	16-45						
Wire—drawn	16-45						
Wire—nails and staples	45						
Wire—barbed and twisted	45						
Wire—woven wire fence	45						
Wire—bale ties	45						
Tin mill black plate	45						
Tin plate, hot-dipped	45						
Terres—special coated manufacturing	45						
Sheets—box-rolled	45						
Sheets—cold-rolled	45						
Sheets—galvanized	45						
Sheets—all other coated	45						
Sheets—enameled	45						
Electrical sheets and strip	45						
Strip—hot-rolled	45						
Strip—cold-rolled	45						
Castings	60						
u. Wire drawn; low carbon, 11 percent; high carbon, 16 percent.							
u. For electrical sheets and strip, see this table:							
u. Lead times apply to unmachined castings after approval of patterns for production.							
v. Number of days in advance of first day of month in which shipment is required							
v. Name of product							
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SCHEDULE IV—MINIMUM MILL QUANTITIES
(See sections 17 (a), 19 (g) and 20 (d))

Name of product	Minimum quantity for each size and grade of any item for mill shipment at any 1 time to any 1 destination
Steel (special grades, shapes, specifications, processes, and similar factors must be handled by negotiation):	
Carbon ¹ and low alloy ² steel:	
Ingots, blooms, billets, slabs, and tube rounds, skelp, etc., rerolling quality.....	25 net tons.
Blooms, billets, and slabs, forging quality.....	Product of 1 ingot.
Wire rods, hot-rolled.....	5 net tons.
Structural shapes (heavy).....	5 net tons.
Plates:	
Rolled armor.....	By negotiation. ³
Continuous strip mill production.....	10 net tons.
Sheared, universal, or bar mill production.....	3 net tons.
Rails.....	5 net tons.
Track accessories (joint bars, tie plates, track spikes).....	5 net tons.
Bars, hot-rolled:	
Projectile and shell quality.....	Product of 1 heat. ⁴
Round bars up to and including 3 inches and squares, hexagons, half rounds, ovals, etc., of approximately equivalent sectional area.....	5 net tons.
Round and square bars over 3 inches to, but not including, 8 inches.....	15 net tons.
Bar size shapes (angles, tees, channels and zees under 3 inches).....	5 net tons.
Bars, cold-finished.....	3 net tons.
Bars, tool steel.....	500 pounds.
Pipe, published carload minimum (mixed sizes and grades).....	
Tubing:	
Seamless cold-drawn (O. D. in inches):	
Up to $\frac{3}{4}$ inclusive.....	1,000 feet.
Over $\frac{3}{4}$ to $1\frac{1}{2}$ inclusive.....	800 feet.
Over $1\frac{1}{2}$ to 3 inclusive.....	600 feet.
Over 3 to 6 inclusive.....	400 feet.
Over 6.....	250 feet.
Seamless hot-rolled.....	By negotiation. ³
Welded.....	By negotiation. ³
Wire rods. (See above.)	
Wire, drawn, for further fabrication and manufacturing:	
Low-carbon.....	1 net ton.
High carbon (0.40 carbon and higher):	
0.0475 inch and heavier.....	1 net ton.
Under 0.0475 inch to 0.021 inch inclusive.....	1,000 pounds.
Under 0.021 inch.....	500 pounds.
Wire merchant trade products, assorted.....	5 net tons.
Tin mill products—any 1 gauge.....	5,000 pounds.
Sheet, hot- and cold-rolled.....	5 net tons.
Strip, hot- and cold-rolled.....	3 net tons.
Stainless steel: ⁵ No minimum on standard grades and sizes. For unusual grades or sizes the minimum order is to be worked out by negotiation. ³	
Full-alloy steel: ⁶	
Ingots.....	Product of 1 heat. ⁴
Billet, projectile and shell quality.....	By negotiation. ³
Blooms, slabs, billets (except projectile and shell quality), tube rounds, sheet bars, etc.:	
7 inches square (or equivalent cross sectional area) and under.....	5 net tons.
Larger than 7 inches square (or equivalent cross sectional area).....	10 net tons.
Both of the above may be modified because of a mill's ingot size and/or rolling schedules.	
Wire rods.....	5 net tons.
Structural shapes (heavy).....	By negotiation. ³
Plates:	
Rolled armor.....	By negotiation. ³
Other, whether rolled on continuous strip, sheared, universal or bar mill. (A steel producer need not accept an order unless the total quantity ordered is sufficient to make a heat of steel or unless ingots or slabs are available in stock or unless similar material is regularly being produced.)	
Rails.....	By negotiation. ³
Wheels, rolled or forged (railroad).....	By negotiation. ³
Axles (railroad).....	By negotiation. ³
Bars, hot-rolled, projectile and shell quality.....	By negotiation. ³
Bars, hot-rolled, other:	
Rounds and squares $3\frac{1}{2}$ inches and smaller.....	5 net tons.
Rounds and squares larger than $3\frac{1}{2}$ inches.....	By negotiation. ³
Hexagons and hats.....	5 net tons.
Bars, cold-finished.....	3 net tons.
Bars, tool steel.....	500 pounds.
Oil-country goods.....	By negotiation. ³
Mechanical tubing.....	5 net tons.
Pressure tubing.....	By negotiation. ³
Sheet and strip.....	By negotiation. ³
Steel castings.....	0.
Copper and copper-base alloys:	
Brass mill products:	
Nickel-silver and phosphor bronze.....	200 pounds.
Other.....	500 pounds.
Wire mill products.....	Standard package quantities as published by each mill.
Aluminum:	
Sheet, plate, foil (including strip).....	1,000 pounds.
Rolled rod, bar, structural shapes, wire.....	300 pounds.
Extruded shapes and tubing (including drawn tubing).....	300 pounds.
Other forms.....	None.

¹"Carbon Steel (including wrought iron)" means steel customarily so classified.

²"Low-alloy high-strength steel" means only the proprietary grades promoted and sold for this purpose.

³"By negotiation" means negotiation between mill and its customer. If no acceptable arrangements are worked out, NPA should be notified.

⁴"1 heat" means one batch of metal made in one furnace.

⁵"Stainless steel" means heat and corrosion resisting steel containing 10 percent or more of chromium either with or without nickel, molybdenum, or other elements. Stainless clad steel is considered to be solid stainless. AISI types 501 and 502 and other alloy steel containing 4 percent to but not including 10 percent chromium, which previously was considered as stainless steel, should now be included as full-alloy steel.

⁶"Full-alloy steel" means any alloy steel not classified as "stainless" or "low-alloy high-strength." "Alloy steel" contains any one or more of the following elements in the following amounts: Manganese, maximum of range in excess of 1.65 percent. Silicon, maximum of range in excess of 0.60 percent. Copper, maximum of range in excess of 0.60 percent. Aluminum, chromium, cobalt, columbium, molybdenum, nickel, tantalum, titanium, tungsten, vanadium, zirconium, or any other alloying elements in any amount specified or known to have been added to obtain a desired alloying effect.

⁷2,000 pounds or less from any one pattern or mold, or a minimum production run by the producing foundry.

[CMP Regulation 3]

CMP REG. 3—BASIC RULES OF THE CONTROLLED MATERIALS PLAN

PREFERENCE STATUS OF DELIVERY ORDERS

This regulation is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950. In the formulation of this regulation, there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations. However, consultation with representatives of all industries affected in advance of the issuance of this regulation has been rendered impracticable because the regulation affects almost all industries.

Sec.

1. What this regulation does.
2. Definitions.
3. General status of delivery orders.
4. Status of delivery orders for controlled materials.
5. Status of delivery orders for products or materials other than controlled materials.
6. How DO ratings and allotment numbers are assigned and used to obtain products or materials other than controlled materials.
7. Applicability of other regulations and orders.
8. Records and reports.
9. Applications for adjustment or exception.
10. Communications.
11. Violations.

AUTHORITY: Sections 1 to 11 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply sec. 101, Pub. Law 774, 81st Cong.; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105, 3 CFR, 1950 Supp.; sec. 2, E. O. 10200, Jan. 3, 1951, 16 F. R. 61.

SECTION 1. *What this regulation does.* The purpose of this regulation is to define, under the Controlled Materials Plan, the preference status of delivery orders for controlled materials and delivery orders for products and materials other than controlled materials.

SEC. 2. *Definitions.* As used in this regulation and any other CMP regulation (unless otherwise indicated):

(a) "Production material" means, with respect to any person, any product (including fabricated parts and subassemblies) or any material (excluding controlled material) which will be physically incorporated into his product, and includes the portion of such material normally consumed or converted into scrap in the course of processing. It also includes: (1) Containers and packaging materials required to make delivery of his products, (2) chemicals used directly in the production of his products, and (3) items which he purchases for resale to round out his line, if such items do not represent more than 10 percent of his estimated total sales receipts in a calendar quarter for which he files an application for allotment. It does not include any items purchased by him as manufacturing equipment, or for maintenance, repair, or operating supplies as defined in CMP Regulation No. 5.

(b) "Allotment number" or "allotment symbol" means an allotment number or symbol placed on a delivery order pursuant to this regulation or any other regulation or order of NPA which ex-

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pressly provides for the use of such allotment number or symbol.

SEC. 3. General status of delivery orders. (a) To the extent consistent with this regulation, the provisions of NPA Reg. 2 apply to all delivery orders except authorized controlled material orders.

(b) A delivery order pursuant to a directive issued by NPA shall take precedence over any other delivery order (including an authorized controlled material order) previously or subsequently received, unless a contrary instruction appears in the directive.

SEC. 4. Status of delivery orders for controlled materials. (a) All authorized controlled material orders (as defined in section 2 (q) of CMP Regulation No. 1) shall have equal preferential status and shall take precedence over other delivery orders for controlled material previously or subsequently received.

(b) All delivery orders for controlled material bearing DO ratings, calling for delivery before October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for controlled material previously or subsequently received, except authorized controlled material orders.

(c) A delivery order for controlled material (whether or not it bears a DO rating) calling for delivery after June 30, 1951, may be converted into an authorized controlled material order in accordance with the provisions of section 19 of CMP Regulation No. 1, except that where an allotment symbol (such as the symbol MRO provided for in CMP Regulation No. 5) is to be applied to a delivery order under this paragraph, the certification provided in the applicable regulation or order of NPA shall be used. A delivery order for controlled material calling for delivery after June 30, 1951, which has been converted into an authorized controlled material order shall be scheduled for delivery on the original delivery date, unless the person who placed such order agrees to a different delivery date.

SEC. 5. Status of delivery orders for products or materials other than controlled materials. (a) All delivery orders for products or materials other than controlled materials to which both a DO rating and an allotment number or symbol have been applied, calling for delivery before October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for products or materials other than controlled materials previously or subsequently received.

(b) All delivery orders for products or materials other than controlled materials bearing a DO rating, whether or not an allotment number or symbol has been applied, calling for delivery on or after October 1, 1951, shall have equal preferential status and shall take precedence over other delivery orders for products or materials other than controlled materials previously or subsequently received.

(c) A delivery order for products or materials other than controlled materials (whether or not it bears a DO rat-

ing) calling for delivery after June 30, 1951, may be converted into a delivery order bearing a DO rating with an allotment number or symbol either by (1) furnishing a revised copy of the order showing a DO rating with the appropriate allotment number or symbol, or (2) furnishing in writing information clearly identifying the order and setting forth a DO rating with the appropriate allotment number or symbol. Such delivery order or confirmation having a DO rating with an allotment number must also bear the certification provided in section 6 (d) of this regulation, and such delivery order or confirmation having a DO rating with an allotment symbol (such as the symbol MRO provided for in CMP Regulation No. 5) must also bear the certification provided in the applicable regulation or order of NPA. A delivery order for products or materials other than controlled materials calling for delivery after June 30, 1951, which has been converted into a delivery order bearing a DO rating with an allotment number or symbol shall be scheduled for delivery on the original delivery date, unless the person who placed such order agrees to a different delivery date.

SEC. 6. How DO ratings and allotment numbers are assigned and used to obtain products or materials other than controlled materials. (a) When a production schedule of a prime consumer making class A or class B products is authorized and a related allotment is made to him by a Claimant Agency or an Industry Division, a DO rating shall be assigned to such schedule by such Claimant Agency or Industry Division for use with the related allotment number.

(b) When a production schedule of a secondary consumer making class A products is authorized and a related allotment is made to him by the prime or secondary consumer for whom such products are to be made, the consumer making the allotment shall apply or extend a DO rating to such schedule for use with the related allotment number.

(c) A prime or secondary consumer who has received a DO rating for an authorized production schedule as provided in this section, and a controlled materials producer who has received a DO rating pursuant to section 21 of CMP Regulation No. 1, may use such rating with the related allotment number on delivery orders, only to acquire production materials in the minimum practicable amounts required, and on a date or dates no earlier than required, to fulfill such schedule, or to replace in his inventory production materials used to fulfill authorized production schedules.

(d) A delivery order placed pursuant to paragraph (c) of this section must contain, in addition to a DO rating with an allotment number, a certification in the following form: "Certified under CMP Regulation No. 3," which shall be signed manually or as provided in NPA Reg. 2. This certification shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place an order under the provisions of this regulation to obtain the products or materials covered by the delivery order.

(e) A person placing a delivery order for products or materials other than controlled materials, required for maintenance, repair, or operating supplies, or for minor capital additions, pursuant to CMP Regulation No. 5, shall place thereon a DO rating with the allotment symbol MRO together with the certification provided in CMP Regulation No. 5.

(f) A manufacturer of class B products who has received an authorized production schedule with a DO rating and an allotment number from an Industry Division or a Claimant Agency shall not extend any rating received by him from a customer for such production.

(g) A person who receives a delivery order bearing a DO rating with an allotment number or symbol for any product or material (other than controlled material) which is not manufactured by him, or which is manufactured by him but for the manufacture of which he has received no authorized production schedule, may extend such DO rating to the extent permitted by NPA Reg. 2, and if he does so he shall use such allotment number or symbol and the form of certification prescribed in paragraph (d) of this section.

(h) Purchase requirements for products or materials other than controlled materials covered by a DO rating with an allotment number or symbol may be combined with those which are unrated and/or which are covered by a DO rating without an allotment number or symbol. If this procedure is followed each item covered by a rating must be specifically identified by placing the applicable rating alongside the related item, and such delivery order must contain the certification provided in paragraph (d) of this section. Such single certification shall constitute a representation to the supplier and to NPA that the purchaser is authorized to place the order under all applicable regulations and orders of NPA.

(i) No person shall place any allotment number or symbol on any delivery order for products or materials other than controlled materials, except as provided in this section or as specifically provided in any other regulation or order of NPA.

SEC. 7. Applicability of other regulations and orders. Nothing in this regulation shall be construed to relieve any person from complying with all other applicable regulations and orders of NPA.

SEC. 8. Records and reports. Persons subject to this regulation shall maintain such records and submit such reports to NPA as it shall require, subject to the terms of the Federal Reports Act of 1942.

SEC. 9. Applications for adjustment or exception. Any person subject to any provision of this regulation may file a request for adjustment, exception, or other relief upon the ground that such provision works an undue or exceptional hardship upon him not suffered generally by others in the same trade or industry, or that its enforcement against him would not be in the interest of the national defense or in the public interest. In examining requests claiming that the public interest is prejudiced, consideration will be given to the requirements of

public health and safety, civilian defense, and dislocation of labor and resulting unemployment that would impair the defense program. Each request shall be in writing submitted in triplicate, shall set forth all pertinent facts and the nature of the relief sought, and shall state the justification therefor.

SEC. 10. Communications. All communications concerning this regulation shall be addressed to the National Production Authority, Washington 25, D. C., Ref: CMP Regulation No. 3.

SEC. 11. Violations. Any person who wilfully violates any provision of this regulation or any other regulation or order of the National Production Authority, or who wilfully conceals a material fact or furnishes false information in the course of operation under this regulation, is guilty of a crime and, upon conviction, may be punished by fine or imprisonment, or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

NOTE: All reporting and record-keeping requirements of this regulation have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942.

This regulation shall take effect on May 3, 1951.

NATIONAL PRODUCTION AUTHORITY,
MANLY FLEISCHMANN,
Administrator.

[F. R. Doc. 51-5301; Filed, May 3, 1951;
3:37 p.m.]

Chapter XVIII—National Shipping Authority, Maritime Administration, Department of Commerce

[NSA ORDER NO. 4 (OPR-1)]

OPR-1—SLOP CHESTS

Sec.

1. What this order does.
2. General Agent's requirements.
3. Master's requirements.
4. General provisions.

AUTHORITY: Sections 1 to 4 issued under sec. 204, 49 Stat. 1987, as amended; 46 U. S. C. 1114. Interpret or apply sec. 11, 23 Stat. 56; 46 U. S. C. 670.

SECTION 1. What this order does. In accordance with the provisions of section 11 of the act of Congress approved June 26, 1884, 23 Stat. 56; 46 U. S. C. 670, this order requires all vessels operated by the National Shipping Authority under General Agency Agreement 3-19-51 to be provided with a slop chest subject to all limitations contained in said act.

SEC. 2. General Agent's requirements. The General Agent shall:

(a) Obtain from the Master, a requisition for slop chest items required for the intended voyage. Purchase for the account of the NSA, from recognized bona fide slop chest suppliers, at prices

not in excess of the fair and reasonable level prevailing at the respective domestic ports, only such items and quantities reflecting past experience of actual requirements.

(b) Arrange for delivery on board to the custody of the Master all slop chest items purchased, together with a copy of the vendor's invoice showing items, units, unit cost and totals.

(c) Furnish the Master with a Slop Chest Statement showing on hand at the beginning of each voyage the items, units, unit cost, totals and selling price per unit of each item. The selling price shall approximate but not exceed 110 percent of the reasonable wholesale value of the same at the port at which the voyage commenced. The Slop Chest Statement shall also provide spaces for:

- (1) Quantities and total value sold.
- (2) Quantities and total cost value on hand, end of voyage.

(3) Quantities of each item required for next voyage.

(d) Submit to the Division of Operations, NSA, Washington 25, D. C., upon termination of each voyage, a copy of the Slop Chest Statement obtained from the Master, as provided for in section 3 (b) of this order and a copy of all invoices for slop chest purchases showing items by brand or trade name, unit cost and total.

(e) Account to the Division of Operations, NSA, Washington 25, D. C., if required, for the purchase, delivery to the Master, receipts from sales, condemnations, transfers and all other transactions in connection with slop chests.

SEC. 3. Master's requirements. The Master shall:

(a) Receive and receipt for the quantities of slop chest items delivered on board.

(b) Upon the termination of each voyage complete the Slop Chest Statement referred to in section 2 (c) of this order, as to quantities and total value sold, quantities and total cost value on hand at end of voyage and quantities of each item required for the next voyage.

(c) Sell, from time to time as specified by him, any of the contents of the slop chest to any or every seaman applying therefor, at the unit price, specified by the Slop Chest Statement furnished the Master by the General Agent as provided in section 2 (c) of this order.

(d) Account to the General Agent for all slop chest items received on board, for all receipts and for all other slop chest transactions engaged in during the voyage.

(e) Cause entry to be made in the ship's log authenticated by the person designated by the Master to be in charge of the slop chest, together with signatures of two other witnesses, for all losses sustained due to fire, water or other damage which renders articles unsaleable. Such log entries shall itemize the quantities damaged and the cost thereof.

(f) Submit a detailed written report to the General Agent covering losses incurred due to damage, theft or pilferage of slop chest items. The report shall be submitted at the termination of the

voyage during which the damage, theft or pilferage occurred.

(g) Retain on board, all damaged slop chest items, for survey, removal and disposition by the General Agent at a domestic port.

SEC. 4. General provisions. (a) All slop chest items, damaged or otherwise, shall be removed or transferred only in compliance with applicable regulations dealing with Property Removals.

(b) In the transfer of a vessel from one General Agent to another General Agent the physical transfer of the complete slop chest shall also be accomplished between the respective General Agents. The General Agents participating in such transfer shall complete and have their respective representatives sign, a joint inventory containing the unit cost price and extensions of all slop chest items, a copy of which shall be submitted to the Division of Operations, NSA, Washington 25, D. C., together with a copy of the Slop Chest Statement for the voyage terminated prior to transfer of the vessel. An additional copy of the Slop Chest Statement shall be submitted to the Comptroller's Office, Division of Accounts, Maritime Administration, Washington 25, D. C.

(c) In pricing the contents of the slop chest, the General Agent shall comply with all applicable regulations of the Office of Price Stabilization, Economic Stabilization Agency.

(d) It shall be the responsibility of each General Agent and Master to exercise reasonable care and diligence in the compliance with the Owner's obligations hereunder and in the protection and disposition of slop chest items.

(e) Neither the General Agent nor the Master shall place insurance on the contents of the slop chest purchased for the account of the NSA.

All slop chests purchased on or after the effective date of this regulation shall conform to the instructions contained in this order.

Effective date: This order shall be effective on date of publication in the FEDERAL REGISTER.

Dated: April 26, 1951.

[SEAL] C. H. McGuire,
Director,

National Shipping Authority.

[F. R. Doc. 51-5265; Filed, May 4, 1951;
9:00 a. m.]

TITLE 43—PUBLIC LANDS: INTERIOR

Chapter I—Bureau of Land Management, Department of the Interior

Appendix—Public Land Orders
[Public Land Order 717]

ARIZONA AND NEW MEXICO

PARTIAL REVOCATION OF CERTAIN EXECUTIVE ORDERS CREATING PUBLIC WATER RESERVES

By virtue of the authority vested in the President by the act of June 25, 1910, 36 Stat. 847 (43 U. S. C. 141), and pur-

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suant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

1. The Executive order of April 28, 1917, creating Public Water Reserve No. 50, is hereby revoked so far as it affects the following-described land in New Mexico:

NEW MEXICO PRINCIPAL MERIDIAN

T. 14 S., R. 17 W.
Sec. 26, NE $\frac{1}{4}$.

The area described contains 160 acres. This land is isolated from other Federally-owned lands and is suitable for disposition under section 2455 of the Revised Statutes, as amended.

2. The Executive order of July 10, 1919, creating Public Water Reserve No. 65, is hereby revoked so far as it affects the following-described lands in New Mexico:

NEW MEXICO PRINCIPAL MERIDIAN

T. 1 S., R. 20 E.
Sec. 34, SW $\frac{1}{4}$ SE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$.
T. 2 S., R. 20 E.
Sec. 15, NE $\frac{1}{4}$.

The areas described aggregate 240 acres. These lands are primarily suitable for grazing and are within New Mexico Grazing District No. 6, established by order of the Secretary of the Interior dated April 8, 1935.

3. The Executive order of April 17, 1926, creating Public Water Reserve No. 107, is hereby revoked so far as it affects the following-described land in Arizona:

GILA AND SALT RIVER MERIDIAN

T. 9 $\frac{1}{2}$ N., R. 2 E.
Sec. 25, W $\frac{1}{2}$ NW $\frac{1}{4}$.

The area described contains 80 acres. This land is primarily grazing in character.

No applications for these lands may be allowed under the homestead, small-tract, or desert-land laws, or any other nonmineral public-land laws unless the land in question has already been classified as valuable or suitable for such types of application or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject

only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey

Offices in Phoenix, Arizona, and Santa Fe, New Mexico, respectively, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Land and Survey Offices in Phoenix, Arizona, and Santa Fe, New Mexico, respectively.

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 1, 1951.

[F. R. Doc. 51-5201; Filed, May 4, 1951;
8:45 a. m.]

[Public Land Order 716]

ALASKA

REVOKING EXECUTIVE ORDER NO. 8223 OF AUGUST 21, 1939, WHICH MADE CERTAIN TOWN SITE LANDS AVAILABLE FOR THE USE OF ALASKA ROAD COMMISSION FOR AVIATION FIELD PURPOSES

By virtue of the authority vested in the President by the acts of June 25, 1910, 36 Stat. 847 (43 U. S. C. 141), and March 12, 1914, 38 Stat. 305, 306 (48 U. S. C. 303), and pursuant to Executive Order No. 9337 of April 24, 1943, it is ordered as follows:

Executive Order No. 8223 of August 21, 1939, which modified Executive Order No. 1919 $\frac{1}{2}$ of April 21, 1914, reserving certain lands in Alaska for town site purposes, to the extent necessary to permit the S $\frac{1}{2}$ block 38 and all of block 45 in Nenana Town Site to be used by the Alaska Road Commission for aviation field purposes, is hereby revoked.

The lands affected by this revocation will be reappraised and offered at public sale pursuant to the laws and regulations relating to railroad town sites in Alaska.

OSCAR L. CHAPMAN,
Secretary of the Interior.

MAY 1, 1951.

[F. R. Doc. 51-5200; Filed, May 4, 1951;
8:45 a. m.]

PROPOSED RULE MAKING

FEDERAL COMMUNICATIONS
COMMISSION

[47 CFR, Parts 2, 3 I]

[Docket Nos. 8736, 8975, 8976, 9175]

TELEVISION BROADCAST SERVICE

NOTICE OF PROPOSED RULE MAKING

In the matters of amendment of § 3.606 of the Commission's rules and

regulations, Docket Nos. 8736 and 8975; amendment of the Commission's rules, regulations, and Engineering Standards Concerning the Television Broadcast Service, Docket No. 9175; Utilization of frequencies in the band 470 to 890 Mcs for Television Broadcasting, Docket No. 8976.

1. Paragraph "II-B-1" of Appendix A attached to the third notice of further proposed rule making (FCC 51-244) (16

F. R. 3072) issued by the Commission herein on March 22, 1951, provides as follows:

(1) A channel assigned to a community in the Commission's Table of Television Assignments shall be available, without the necessity of rule making proceedings, to any other community located within 15 miles of the assigned community provided the minimum sep-

arations set forth in paragraphs "E" and "G" herein are maintained.*

The purpose of the above proposal was to permit unassigned communities to apply for channels in assigned communities situated within 15 miles thereof without the necessity of first initiating a rule making proceeding. When the above third notice was issued, the Commission believed that such intention was evident from the use of the distinguishing words "assigned community."

2. From the inquiries received by the Commission it appears that written clarification of the above proposal may prove helpful in understanding the Commission's intentions in the matter. Accordingly, paragraph "II-B-1" of Appendix A attached to the third notice of further proposed rule making herein is amended to read as follows:

1. A channel assigned to a community in the Commission's Table of Television Assignments shall be available, without the necessity of rule making proceedings, to any other community which is located within 15 miles of the assigned community and which has no assignment of its own provided the minimum separations set forth in paragraph "E" and "G" herein are maintained.*

3. Authority to issue the above amendment is vested in the Commission by sections 4 (i); 301, 303, (b), (c), (d), (e), (f), (g), (h), (r) and 307 (b) of the Communications Act of 1934, as amended.

Adopted: April 25, 1951.

Released: April 25, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5204; Filed May 4, 1951;
8:46 a. m.]

[47 CFR, Parts 7, 8]

[Docket No. 9954]

COASTAL AND MARINE RELAY SERVICES; SHIP SERVICE

NOTICE OF PROPOSED RULE MAKING

In the matter of amendment of § 7.58 (c) of Part 7, and § 8.81 (c) of Part 8 of the Commission's rules governing Coastal and Marine Relay Services, and Ship Service, respectively; Docket No. 9954.

Notice is hereby given of proposed rule making in the above entitled matter.

The Commission has heretofore in Docket 9797 (§ 7.306 (a) and (b), and § 8.354 (a) (1)) proposed amendments of Parts 7 and 8 of the Commission's rules governing Coastal and Marine Relay Services, and Ship Service, respectively, which, among other matters, expressly restricted the use of certain frequencies to coast stations located at

or in the vicinity of specific places and to ship radiotelephone stations for communication with coast stations located at or in the vicinity of specific places. The Commission now desires to propose additional locations at which frequencies in the 2-3.5 megacycle band may be used by coast and ship radiotelephone stations (under certain specified limitations) and an additional frequency which may be used by coast and ship radiotelephone stations. The proposed rule changes involve amendments to present § 7.58 (c) and 8.81 (c) of the Commission's rules governing Coastal and Marine Relay Services, and Ship Service, respectively, and are set forth below.

In order to expedite the availability of the frequencies involved herein, the earlier relevant portion of the proposals set forth in Docket 9797 are reflected herein as well as the new proposals dealing with those frequencies. Comments heretofore submitted in Docket 9797 in connection with the previous proposals will be considered in connection with this new docket. Accordingly, comments in the instant proceeding should be confined to such new issues as may have been introduced by this docket as compared to Docket 9797 in respect to the same rule content.

The proposed amendment is issued under the authority of sections 301 and 303 (c), (f), and (r) of the Communications Act of 1934, as amended.

Any interested party who is of the opinion that the proposed amendments should not be adopted, or should not be adopted in the form set forth herein, may file with the Commission on or before May 28, 1951, a written statement or brief setting forth his comments. At the same time, any person who favors the rules as set forth may file a statement in support thereof. Comments or briefs in reply to the original comments or briefs may be filed within seven days from the last day for filing the said original comments or briefs. If any comments are received which appear to warrant the Commission in holding an oral argument before final action is taken, notice of the time and place of such oral argument will be given such interested parties.

In accordance with the provisions of § 1.764 of the Commission's rules, an original and 14 copies of all statements, briefs or comments filed shall be furnished the Commission.

Adopted: April 25, 1951.

Released: April 26, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

1. Proposed amendment of § 7.58 (c) of Part 7 of the Commission's rules governing Coastal and Marine Relay Services with regard to the following frequencies:

(c) Coastal-harbor stations:

- (Boston, Mass.)
- (San Francisco, Calif.)
- (Eureka, Calif.)
- (Galveston, Tex.)
- (Miami, Fla.)
- (Great Lakes area)
- (Seattle, Wash.)
- (New York, N. Y.)
- (Tampa, Fla. (day only))
- (Los Angeles or San Diego, Calif. (day only))
- (Galveston, Tex.)
- (Hawaiian Islands)
- (San Juan, P. R.)
- (Norfolk, Va.)
- (Quantico, Va.)
- (San Francisco and Eureka, Calif. (day only))
- (Tampa, Fla.)
- (Great Lakes area)
- (Boston, Mass. (day only))
- (Wilmington, Del.)
- (New York, N. Y.)
- (New Orleans, La. (day only))
- (Charleston, S. C.)
- (Jacksonville, Fla.)
- (Los Angeles, Calif.)
- (Seattle, Wash. (day only))
- (Mobile, Ala.)
- (Great Lakes area)
- (Hawaiian Islands)
- (New York, N. Y.)
- (Miami Beach, Fla. (day only))
- (New Orleans, La.)
- (Portland, Oreg.)
- (Astoria, Oreg.)
- (San Diego and Los Angeles, Calif. (day only))

* The use, when assigned, of the frequency 2500 kilocycles designated for use at Galveston, Texas, and the use, when assigned, of the frequencies designated for use on a "day only" basis, is authorized only upon the condition that no harmful interference will be caused to any government station operating on the same or adjacent frequency; the frequencies 2522, 2538, 2566, and 2598 kilocycles, where designated for use on a "day only" basis, shall, when assigned, be used subject to interference by government stations.

* The use of the frequency 2538 kilocycles at San Francisco and Eureka, California shall be coordinated with the Naval Commandant of the 12th Naval District, prior to operation thereon.

* The use of the frequency 2598 kilocycles at San Diego or Los Angeles, California shall be coordinated with the Naval Commandant of the 11th Naval District, prior to operation thereon.

2. Proposed amendment of § 8.81 (c) of Part 8 of the Commission's rules governing Ship Service with regard to the following frequencies:

(c) To ship telephone stations for communication with coastal-harbor stations:

- (Boston, Mass.)
- (San Francisco, Calif.)
- (Eureka, Calif.)
- (Galveston, Tex.)
- (Miami, Fla.)
- (Great Lakes (U. S. and Canada))
- (Seattle, Wash.)
- (New York, N. Y.)
- (Tampa, Fla. (day only))
- (Los Angeles or San Diego, Calif. (day only))
- (Galveston, Tex.)
- (Hawaiian Islands)
- (San Juan, P. R.)
- (Norfolk, Va.)
- (Quantico, Va.)
- (San Francisco and Eureka, Calif. (day only))
- (Tampa, Fla.)
- (Great Lakes, (U. S. only))
- (Boston, Mass. (day only))
- (Wilmington, Del.)
- (New York, N. Y.)
- (New Orleans, La. (day only))
- (Charleston, S. C.)
- (Jacksonville, Fla.)
- (Los Angeles, Calif.)
- (Seattle, Wash. (day only))
- (Mobile, Ala.)
- (New York, N. Y.)
- (Hawaiian Islands)
- (Miami Beach, Fla. (day only))
- (New Orleans, La.)
- (Portland, Oreg.)
- (Astoria, Oreg.)
- (San Diego or Los Angeles, Calif. (day only))

* The use, when assigned, of the frequency 2110 kilocycles designated for communication with Galveston, Texas, and the use, when assigned, of the frequencies designated for use on a "day only" basis, is authorized only upon the condition that no harmful interference will be caused to any government station operating on the same or adjacent frequencies; the frequencies 2142, 2198, and 2206 kilocycles where designated for use on a "day only" basis, shall, when assigned, be used subject to interference by government stations.

[F. R. Doc. 51-5203; Filed, May 4, 1951;
8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Parts 944, 970]

[AMA Docket No. AO-105-A8, Quad Cities]

[AMA Docket No. AO-174-A5, Clinton, Iowa]

HANDLING OF MILK IN QUAD CITIES AND CLINTON, IOWA, MILK MARKETING AREAS

PROPOSED AMENDMENTS TO TENTATIVE MARKETING AGREEMENTS AND TO ORDERS, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of a joint public hearing to be held in the Council Chambers, Rock Island City Hall, Rock Island, Illinois, beginning at 10:00 a. m. c. s. t., May 21, 1951, for the purpose of receiving evidence with respect to economic and marketing conditions in each of the marketing areas specified above which relate to the proposed amendments hereinafter set forth, or appropriate modifications thereof, to the tentative marketing agreements heretofore approved by the Secretary of Agriculture and to the orders, as amended, now in effect, regulating the handling of milk in such marketing areas.

It has been proposed by the Clinton Milk Producers Association, the Illinois-Iowa Milk Producers Association and the Quality Milk Association that a merger of the order (No. 44) regulating the handling of milk in the Quad Cities marketing area and the order (No. 70) regulating the handling of milk in the Clinton, Iowa, marketing area be made for the purpose of (1) extending the Quad Cities marketing area to include, in addition to the territory now covered, all of the present Clinton, Iowa, marketing area, and (2) revising certain other provisions now contained in either or both orders.

In the event the merging of the two areas is not adopted, they propose amending the separate orders in accordance with the proposed amendments they have submitted. Such associations further propose the termination of all provisions of Order No. 70, if the proposed merger is adopted.

A complete order for the Quad Cities market is set forth below as it would appear if amended in accordance with the proposals of the three associations. In the event the merger is not approved and the orders are amended separately in accordance with the proposals of the three associations, both orders would be virtually identical to that set forth below except for the descriptions of the separate marketing areas.

Additional amendment proposals which have been submitted by the Dubuque Cooperative Dairy Marketing Association, the Rock River Dairy and the Sturtevant Dairy Products Company, are also set forth below. The proposal of the Dubuque Cooperative Dairy Mar-

keting Association would extend the Quad Cities marketing area to include the territory now covered by the Dubuque, Iowa, marketing area, now regulated by Order No. 12. Presumably, if this proposal were adopted, it would be necessary to terminate all the provisions of Order No. 12, regulating the handling of milk in the Dubuque, Iowa, marketing area.

None of the proposed amendments to be considered has received the approval of the Secretary of Agriculture.

Order No. 44, Including Amendments Proposed by the Clinton Milk Producers Association, the Illinois-Iowa Milk Producers Association and the Quality Milk Association¹

DEFINITIONS

§ 944.1 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.).

§ 944.2 *Secretary.* "Secretary" means the Secretary of Agriculture or such other officer or employee of the United States as may be authorized to exercise the powers and to perform the duties of the said Secretary of Agriculture.

[§ 944.3 *Quad Cities marketing area.* "Quad Cities marketing area", hereinafter called the "Marketing Area," means the territory lying within the corporate limits of the city of Clinton and that part of Camanche Township, including the city of Camanche, lying east of sections 2, 11, 14, 23, 26 and 35. All in Clinton County, Iowa; the territory lying within the corporate limits of the cities of Davenport and Bettendorf, Iowa, and Rock Island, Moline, East Moline and Silvis, Illinois; together with the territory lying within the following townships: Davenport, Rockingham and Pleasant Valley in Scott County, Iowa; and South Moline, Moline, Blackhawk, Coal Valley, Hampton, and South Rock Island in Rock Island County, Illinois.]

§ 944.4 *Department of Agriculture.* "Department of Agriculture" means the United States Department of Agriculture or such other Federal agency as may be authorized to perform the price reporting functions of the United States Department of Agriculture.

§ 944.5 *Person.* "Person" means any individual, partnership, corporation, association, or any other business unit.

§ 944.6 *Delivery period.* "Delivery period" means the calendar month or the total portion thereof during which this part is in effect.

§ 944.7 *Cooperative association.* "Cooperative association" means any cooperative marketing association of producers which the Secretary determines: (a) is qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; (b) has full authority in the sale of milk of its members; and (c) is engaged in making

¹ Proposed amendments to the orders as now in effect are shown with brackets.

collective sales of or marketing milk or its products for its members.

[§ 944.8 *Producer.* "Producer" means any person who, in conformity with the requirements of the health authorities of any of the several municipalities in the marketing area or the Grade A milk and Grade A milk products law of the State of Illinois for the production of milk for consumption as milk, produces milk which (a) is received at a plant from which milk is disposed of as Class I milk on wholesale or retail routes (including plant stores) within the marketing area, or (b) is caused by a cooperative association to be diverted from a plant described in paragraph (a) of this section to a plant from which no Class I milk is disposed of within the marketing area. This definition shall not include a person with respect to milk produced by him which is received by a handler who is subject to another Federal Marketing Order and who is partially exempt from the provisions of this part pursuant to § 944.56.]

[§ 944.9 *Handler.* "Handler" means (a) any person with respect to all milk received at a plant operated by him, from which milk is disposed of as Class I milk on wholesale or retail routes (including plant stores) within the marketing area, or (b) a cooperative association with respect to the milk of any producer which it causes to be delivered to a plant described in paragraph (a) of this section, or which it causes to be diverted from such a plant to a plant from which no milk is disposed of as Class I milk on wholesale or retail routes (including plant stores) within the marketing area.

[§ 944.10 *Producer - handler.* "Producer-handler" means any person who is both a producer and a handler and who receives no milk directly from the farms of other producers: *Provided*, That the maintenance, care, and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk are the personal enterprise and the personal risk of such person.

[§ 944.11 *Producer-milk.* "Producer-milk" means all skim milk and butterfat which is produced by a producer, other than a producer-handler, and which is received by a handler either directly from producers or from other handlers.

[§ 944.12 *Other sources of milk.* "Other source milk" means all skim milk and butterfat except that contained in producer milk and in nonfluid milk products disposed of in the form in which received without further processing or packaging.]

[§ 944.1 (l) and (m) would be deleted.]

MARKET ADMINISTRATOR

§ 944.20 *Designation.* The agency for the administration of this part shall be a market administrator who shall be a person selected by the Secretary. Such person shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of the Secretary.

§ 944.21 Powers. The market administrator shall:

(a) Administer the terms and provisions of this part;

(b) Make rules and regulations to effectuate the terms and provisions of this part;

(c) Receive, investigate, and report to the Secretary complaints of violations of the terms and provisions of this part; and

(d) Recommend to the Secretary amendments to this part.

§ 944.22 Duties. The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

(a) Within 30 days following the date upon which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties in an amount and with surety thereon satisfactory to the Secretary;

(b) Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions of this part;

(c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;

(d) Pay out of the funds provided by § 944.75, the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses, except those incurred under § 944.76, necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;

(e) Keep such books and records as will clearly reflect the transactions provided, for herein, and, upon request by the Secretary, surrender the same to such person as the Secretary may designate;

(f) Submit his books and records to examination by the Secretary and furnish such information and reports as may be requested by the Secretary;

(g) Publicly announce, unless otherwise directed by the Secretary, by posting in a conspicuous place in his office and by such other means as he deems appropriate, the name of any person who within 10 days after the date upon which he is required to perform such acts has not made (1) reports pursuant to § 944.30, or (2) payments pursuant to §§ 944.65 to 944.70;

(h) On or before the 10th day after the end of each delivery period, report to each cooperative association the amount and classification of milk caused to be delivered by such cooperative association to any handler, if such amount or classification reported by the handler differs from that reported by the cooperative association;

(i) Audit each handler's records and payments by inspection of such handler's records and the records of any other person upon whose utilization the classification of skim milk and butterfat for such handler depends;

(j) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate, the prices determined for each delivery period as follows:

(1) On or before the 5th day of each delivery period, (i) The minimum price for Class I milk computed pursuant to § 944.50 (a) for the current delivery period and the butterfat differential computed pursuant to § 944.51 (a) for the current delivery period, and (ii) the minimum prices for Class II milk and Class III milk computed pursuant to § 944.50 (b) and (c) for the previous delivery period and the butterfat differentials computed pursuant to § 944.51 (b) and (c) for the previous delivery period, and

(2) On or before the 10th day of each delivery period the uniform price computed pursuant to § 944.61 and the butterfat differential computed pursuant to § 944.66, both for the previous delivery period; and

(k) Prepare and disseminate to the public such statistics and information as he deems advisable and as do not reveal confidential information.

REPORTS, RECORDS AND FACILITIES

§ 944.30 Delivery period reports of receipts and utilization. On or before the 5th day of each delivery period each handler, except a producer-handler, shall report to the Market Administrator in the detail and on the forms prescribed by the market administrator:

[(a) The quantities of skim milk and butterfat contained in (or used in the production of) all receipts within the delivery period of (1) producer milk, (2) skim milk and butterfat in any form from other handlers, and (3) other source milk and the sources thereof;]

(b) The utilization of all receipts required to be reported pursuant to paragraph (a) of this section; and

(c) Such other information with respect to all such receipts and utilization as the market administrator may prescribe.

§ 944.31 Other reports. Each producer-handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may prescribe.

§ 944.32 Records and facilities. Each handler shall maintain and make available to the Market Administrator or to his representative during the usual hours of business, such accounts and records of his operations and such facilities as are necessary for the market administrator to verify or to establish the correct data with respect to:

(a) The receipts and utilization, in whatever form, of all skim milk and butterfat received, including nonfluid milk products disposed of in the form in which received without further processing or packaging;

(b) The weights and tests for butterfat and for other content of all skim milk, milk, cream, and milk products handled;

(c) Payments to producers and cooperative associations; and

(d) The pounds of skim milk and butterfat contained in or represented by all

skim milk, milk, cream, and milk products on hand at the beginning and end of each delivery period.

§ 944.33 Retention of records. All books and records required under this part to be made available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: *Provided*, That if, within such three-year period the Market Administrator notifies the handler in writing that the retention of such records or of specified books and records is necessary in connection with a proceeding under section 8c (15) (A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified books and records, until further written notification from the Market Administrator. In either case the Market Administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

CLASSIFICATION

§ 944.40 Skin milk and butterfat to be classified. All skim milk and butterfat received during the delivery period by a handler from producers or other handlers or as other source milk shall be classified by the Market Administrator pursuant to §§ 944.41 to 944.47.]

§ 944.41 Classes of utilization. Subject to the conditions set forth in §§ 944.43 and 944.44, the classes of utilization shall be as follows:

[(a) Class I milk shall be all skim milk (including reconstituted skim milk) and butterfat disposed of in the form of milk, skim milk, buttermilk, flavored milk, flavored milk drinks, concentrated milk, cream, or any mixture (except ice cream mix) of cream and milk or skim milk containing more than 6 percent of butterfat. Yoghurt, Reddi-wip, Super-whip and similar products, and all skim milk and butterfat not specifically accounted for under paragraphs (b) and (c) of this section.

(b) Class II milk shall be all skim milk and butterfat used to produce evaporated milk, condensed milk, condensed skim milk, ice cream, ice cream mix, cottage cheese, or any other milk product not specified in paragraphs (a) and (c) of this section.

(c) Class III milk shall be all skim milk and butterfat (1) used to produce butter, American-type cheddar cheese, animal feed, casein, and nonfat dried milk solids; (2) in shrinkage up to 2 percent of receipts from producers; and (3) in shrinkage of other source milk.]

§ 944.42 Shrinkage. The Market Administrator shall allocate shrinkage over a handler's receipts as follows:

(a) Compute the total shrinkage of skim milk and butterfat for each handler.

(b) Prorate the resulting amounts between the receipts of skim milk and butterfat received from producers and from other sources.]

PROPOSED RULE MAKING

§ 944.43 Responsibility of handlers and reclassification of milk. (a) All skim milk and butterfat received by a handler shall be Class I milk, unless the handler who first receives such skim milk or butterfat can prove to the market administrator that it should be classified otherwise.

(b) Any skim milk or butterfat (except that transferred to a producer-handler) shall be reclassified if verification by the Market Administrator discloses that the original classification was incorrect.

§ 944.44 Transfers. Skim milk or butterfat disposed of by a handler either by transfer or diversion shall be classified:

(a) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream to another handler, except a producer-handler, unless utilization in another class is mutually indicated in writing to the Market Administrator by both handlers on or before the 5th day after the end of the delivery period within which such transaction occurred, but in no event shall the amount classified in any class exceed the total use in such class by the transferee handler: *Provided*, That if either or both handlers have received other source milk such milk so disposed of shall be classified at both plants so as to return the higher class utilization to producer milk.

(b) As Class I milk if transferred to a producer-handler in the form of milk, skim milk, or cream.

(c) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream to a nonhandler's plant unless (1) The handler claims other utilization on the basis of utilization mutually indicated in writing to the Market Administrator by both the handler and nonhandler on or before the 5th day after the end of the delivery period within which such transfer or diversion occurred, (2) such nonhandler maintains books and records showing the utilization of all skim milk and butterfat at his plant, which are made available if requested by the Market Administrator for the purpose of verification, and (3) such nonhandler's plant had actually used not less than the equivalent amount of skim milk and butterfat in the use indicated in such statement: *Provided*, That if verification of such nonhandler's records discloses that an equivalent amount of skim milk and butterfat had not been used in such indicated utilization, the remaining pounds shall be classified in series beginning with the next higher price classification in which such nonhandler had utilization.]

§ 944.45 Receipts from a cooperative association. Skim milk and butterfat caused to be delivered from a producer to any other handler by a cooperative association shall be ratably apportioned over the receiving handler's total utilization of milk remaining after the subtraction of other source milk and receipts from other handlers which are not cooperative associations.]

§ 944.46 Computation of skim milk and butterfat in each class. For each delivery period the Market Administrator shall correct mathematical and other

obvious errors in the delivery period report submitted by each handler and shall compute the total pounds of skim milk and butterfat, respectively, in Class I milk, Class II milk, and Class III milk for such handler.]

§ 944.47 Allocation of skim milk and butterfat classified. After computing the classification of all skim milk and butterfat received by a handler pursuant to § 944.46, the Market Administrator shall determine the classification of milk received from producers as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract for the total pounds of skim milk in Class III the pounds of skim milk determined pursuant to § 944.41 (c) (2);

(2) Subtract from the remaining pounds of skim milk in each class in series beginning with the lowest-priced class in which the handler has use, the pounds of skim milk contained in other source milk;

(3) Subtract from the remaining pounds of skim milk in each class the pounds of skim milk contained in receipts from other handlers in accordance with its classification as determined pursuant to § 944.44 (a);

(4) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph; and

(5) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk received from producers, an amount equal to the difference shall be subtracted from the pounds of skim milk in each class in series beginning with the lowest-priced class in which the handler has use. Any amount so subtracted shall be called "Overrun."

(b) Butterfat shall be allocated in accordance with the same procedure outlined for skim milk in paragraph (a) of this section.]

MINIMUM PRICES

§ 944.50 Class prices. Subject to the provisions of §§ 944.51 and 944.52 the minimum prices per hundredweight to be paid by each handler for milk received at his plant from producers during the delivery period shall be as follows:

(a) **Class I milk.** The price for Class II milk for the preceding delivery period plus \$1.25 during the months of January, February and March; plus \$0.80 during the months of April, May and June; and plus \$1.55 during the remaining months of each year.

(b) **Class II milk.** The higher of the prices resulting from the computations made pursuant to subparagraphs (1) and (2) of this paragraph.

(1) The average of the basic or field prices reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during such delivery period at each of the following listed manufacturing plants or places for which prices are reported to the Market Administrator or to the Department of Agriculture:

Borden Co., Black Creek, Wis.

Borden Co., Greenville, Wis.

Borden Co., Mount Pleasant, Mich.

Borden Co., New London, Wis.

Borden Co., Orfordville, Wis.
Carnation Co., Berlin, Wis.
Carnation Co., Jefferson, Wis.
Carnation Co., Chilton, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Belleville, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

(2) The price resulting from the following computation:

(i) Multiply by 6 the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period;

(ii) Add an amount equal to 2.4 times the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of the cheese known as "Twins" at Chicago as reported by the Department of Agriculture during the delivery period;

(iii) Divide the resulting sum by 7;

(iv) Add 30 percent thereof; and

(v) Multiply the resulting sum by 3.5.

(c) **Class III milk.** The higher of the prices resulting from the following computations by the Market Administrator:

(1) Multiply by 2.4 the simple average, as published by the Department of Agriculture, of the prices determined per pound of "Cheddars" on the Wisconsin Cheese Exchange at Plymouth, Wisconsin, during the delivery period in which such milk was received and multiply such result by 3.5. If there are no sales on the exchange during any week the last previously quoted price shall be used as the price for that week in making these computations;

(2) From the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period, deduct 6 cents, multiply the resulting sum by 1.2, and then multiply that result by 3.5; and add the result of the following: from the simple average of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, for human consumption, f. o. b., manufacturing plants in the Chicago area, as published for the period from the 26th day of the immediately preceding month through the 25th day of the current month, deduct 6½ cents and multiply the result by 8.2 and that result by .965: *Provided*, That, if such f. o. b. manufacturing plant prices for nonfat dry milk solids are not reported, there shall be used for the purpose of such computation the average of carlot prices for nonfat dry milk solids for human consumption, both spray and roller process, delivered at Chicago as reported by the Department of Agriculture during the delivery period; and in the latter event 8½ cents

shall be used in lieu of the 6½ cent deduction in arriving at the computation.]

[§ 944.51 *Butterfat differentials to handlers.* If the average butterfat content of the milk allocated to any class by any handler pursuant to § 944.48 is more or less than 3.5 percent, there shall be added to the respective class price computed pursuant to § 944.50 for each one-tenth of 1 percent that the average butterfat content is above 3.5 percent, or subtracted for each one-tenth of 1 percent that such average butterfat content is below 3.5 percent, an amount equal to the applicable butterfat differential computed as follows:

(a) *Class I milk.* Multiply the simple average of the daily average wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period preceding that in which the milk was received by 1.40 and divide the resulting amount by 10.

(b) *Class II Milk.* Multiply the simple average of the daily average wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period in which the milk was received by 1.20 and divide the resulting amount by 10.

(c) *Class III Milk.* From the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk creamery butter per pound at Chicago as reported by the Department of Agriculture during the delivery period in which the milk was received subtract 6 cents, multiply the result by 1.20 and divide the result by 10.]

§ 944.52 *Emergency price provisions.* (a) Whenever the provisions of this part require the Market Administrator to use a specific price or prices for any milk product for the purpose of determining class prices or for any other purpose the Market Administrator shall add to the specified price the amount of any subsidy or other similar payments being made by any Federal agency in connection with the milk, or product, associated with the prices specified.

(b) If the specified price which the Market Administrator is required to use for the purpose of determining class prices or for any other purpose is not reported or published, the Market Administrator shall use a price determined by the Secretary to be equivalent to or comparable with the price specified.

APPLICATION OF PROVISIONS

§ 944.55 *Producer-handler.* Sections 944.40 to 944.48, 944.50 to 944.52, 944.60 and 944.61, 944.65 to 944.70, 944.75 and 944.80 shall not apply to a producer-handler.

§ 944.58 *Handlers subject to other Federal orders.* In the case of any handler who the Secretary determines disposes of a greater portion of his milk as Class I milk in another marketing area regulated by another milk marketing

order issued pursuant to the act, the provisions of this part shall not apply except as follows:

(a) The handler shall, with respect to his total receipts and utilization of skim milk and butterfat, make reports to the Market Administrator at such time and in such manner as the Market Administrator may require and allow verification of such reports in accordance with the provisions of § 944.32.

(b) If the price which such handler is required to pay under the other order to which he is subject for skim milk and butterfat which would be classified as Class I milk under this part, is less than the price provided by this part, such handler shall pay to the market administrator for deposit into the producer-settlement fund (with respect to all skim milk and butterfat disposed of as Class I milk within the marketing area) an amount equal to the difference between the value of such skim milk or butterfat as computed pursuant to this part and its value as determined pursuant to the other order to which he is subject.]

DETERMINATION OF UNIFORM PRICE

[§ 944.60 *Computation of the value of milk received from producers.* The value of the milk received from producers during each delivery period by each handler shall be a sum of money computed by the Market Administrator by multiplying the pounds of milk in each class by the applicable class prices and adding together the resulting amounts: *Provided*, That, if the handler had overrun of either skim milk or butterfat there shall be added to the above value an amount computed by multiplying the pounds of overrun by the applicable class price.]

[§ 944.61 *Computation of uniform price.* For each delivery period the Market Administrator shall compute the uniform price per hundredweight of milk received from producers as follows:

(a) Combine into one total the values computed pursuant to § 944.60 for all handlers who made the reports prescribed by § 944.30 and who made the payments pursuant to §§ 944.65 to 944.68 for the preceding delivery period.

(b) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of contingent obligations to handlers pursuant to §§ 944.69 and 944.70;

(c) Subtract if the average butterfat content of the milk included in these computations is greater than 3.5 percent, or add, if such average butterfat content is less than 3.5 percent, an amount computed by: multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential computed pursuant to § 944.66, and multiplying the resulting figure by the total hundredweight of such milk;

(d) Divide the resulting amount by the total hundredweight of milk included in these computations; and

(e) Subtract not less than 4 cents nor more than 5 cents from the amount per hundredweight computed pursuant to paragraph (d) of this section. The re-

sulting figure shall be known as the uniform price for milk received from producers.]

PAYMENT FOR MILK

[§ 944.65 *Time and method of payment.* Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the delivery period during which the milk was received, to each producer for milk which was not caused to be delivered to such handler by a cooperative association, at not less than the uniform price computed pursuant to § 944.61.

(b) On or before the 12th day after the end of the delivery period during which the milk was received, to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, at not less than the value of such milk computed by multiplying the pounds of such milk allocated to each class pursuant to § 944.47 by the applicable class prices provided in § 944.50.]

[§ 944.66 *Butterfat differential to producers.* In making payments pursuant to § 944.65 (a) there shall be added to or subtracted from the uniform price per hundredweight for each one-tenth of 1 percent that the average butterfat content of the milk received from producers is above or below 3.5 percent an amount representing the weighted average butterfat differential to handlers for all classes of milk pursuant to § 944.51.]

[§ 944.67 *Producer-settlement fund.* The Market Administrator shall establish and maintain a separate fund known as the "Producer-Settlement Fund" into which he shall deposit all payments made by handlers pursuant to §§ 944.56, 944.68, and 944.70, and out of which he shall make all payments to handlers pursuant to §§ 944.69 and 944.70.]

[§ 944.68 *Payments to the producer-settlement fund.* On or before the 13th day after the end of the delivery period during which the milk was received, each handler, including a cooperative association which is a handler, shall pay to the Market Administrator the amount, if any, by which the value of the milk received by such handler from producers as determined pursuant to § 944.60 is greater than the amount required to be paid producers by such handler pursuant to § 944.65.

[§ 944.69 *Payments out of the producer-settlement fund.* On or before the 15th day after the end of the delivery period during which the milk was received, the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the value of the milk received by such handler from producers during the delivery period, as determined pursuant to § 944.60 is less than the amount required to be paid producers by such handler pursuant to § 944.65: *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such

PROPOSED RULE MAKING

payments as soon as the necessary funds are available. No handler who has not received the balance of such payments from the market administrator shall be considered in violation of § 944.65 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 944.70 Adjustment of accounts. Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due; and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

§ 944.71 Termination of obligations. The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose, except an obligation involved in an action instituted before August 1, 1949, under section 8c (15) (A) of the act or before a court.

(a) The obligation of any handler to pay money required to be paid under the terms of this part, shall except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the Market Administrator receives the handler's utilization report on the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain but need not be limited to, the following information:

- (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and

(3) If the obligation is payable to one or more producers or to an association of producers, the name of such producer(s) or association of producers, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this order to be made available, the Market Administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the Market Administrator so notifies a handler, the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the

Market Administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed, or two years after the end of the calendar month during which the payment (including deduction or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c (15) (A) of the act, a petition claiming such money.

OTHER PAYMENTS

[§ 944.75 Expense of administration.] As his pro rata share of the expense of administration of this part, each handler shall pay to the Market Administrator, on or before the 15th day after the end of the delivery period during which the milk was received, 3 cents per hundredweight or such lesser amount as the Secretary from time to time may prescribe, with respect to all receipts within the delivery period from producers (including such handler's own production and receipts from cooperative associations) and with respect to other source milk which is classified as Class I milk: *Provided*, That a handler which is a cooperative association shall pay such pro rata share of expense on only that milk of producers received by such cooperative association or caused by such cooperative association to be delivered to a plant from which no milk is disposed of as Class I milk on wholesale or retail routes (including plant stores within the marketing area).]

§ 944.76 Marketing services. (a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 944.65 shall make a deduction of 6 cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe, with respect to the following:

- (1) All milk received from producers at a plant not operated by a cooperative association; and
- (2) All milk received at a plant operated by a cooperative association from producers who are not members of such cooperative association.

Such deductions shall be paid by the handler to the Market Administrator on or before the 15th day after the end of the delivery period during which the milk was received. Such moneys shall be expended by the Market Administrator for verification of weights and tests of milk received from such pro-

ducers and in providing market information to such producers.

(b) In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments made pursuant to § 944.65 the amount per hundredweight authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the delivery period during which such milk was received.

EFFECTIVE TIME, SUSPENSION AND TERMINATION

§ 944.80 Effective time. The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

§ 944.81 Suspension or termination. The Secretary shall, whenever he finds this part, or any provision of this part, obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this part or any such provision of this part.

§ 944.82 Continuing obligations. If, upon the suspension or termination of any or all provisions of this part, there are any obligations under this part the final accrual or ascertainment of which require further acts by any person (including the market administrator), such further acts shall be performed notwithstanding such suspension or termination.

§ 944.83 Liquidation. Upon the suspension or termination of the provisions of this part, except this section, the market administrator, or such other liquidating agent as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office, dispose of all property in his possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition. If a liquidating agent is so designated all accounts, books, and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the Market Administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

MISCELLANEOUS PROVISIONS

§ 944.90 Agents. The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

§ 944.91 Separability of provisions. If any provision of this part or its application to any person or circumstance, is held invalid, the application of such provision, and of the remaining provisions of this part, to other persons or circumstances shall not be affected thereby.

Proposed by Rock River Dairy:

Amend § 944.3 (§ 944.1 (c) of present Order No. 44) to include the township of Port Byron in Rock Island County, Illinois.

Proposed by Sturtevant Dairy Products Company:

1. Delete § 944.3 (§ 944.1 (c) of present Order No. 44 and § 970.1 (c) of present Order No. 70) and substitute therefor the following:

§ 944.3 Quad Cities-Clinton-Muscatine marketing area. Quad Cities-Clinton-Muscatine marketing area, hereinafter called "marketing area" means the territory lying within the limits of Clinton, Scott and Muscatine Counties, all in the State of Iowa, and Rock Island County, Illinois.

2. Delete § 944.22 (h) (§ 944.2 (c) (8) of present Order No. 44) and substitute therefor the following:

(h) On or before the 12th day after the end of each delivery period, report to each cooperative association the total pounds of skim milk and butterfat caused to be delivered by such cooperative association to any handler, and the total value of such skim milk and butterfat.

3. Delete § 944.41 (b) and (c) (§ 944.4 (b) (3) and (4) of present Order No. 44 and § 970.3 (b) (2) and (3) of present Order No. 70) and substitute therefor the following:

(b) Class II milk shall be all skim milk and butterfat used to produce evaporated milk, condensed or concentrated milk, ice cream and ice cream mix, cottage cheese, butter, casein, American-type Cheddar cheese, all milk or butterfat which is contained in products disposed of in bulk to bakeries, soup companies and candy manufacturing establishments, and all skim milk disposed of as animal feed, and shrinkage up to 2 percent of receipts from producers and cooperative associations and of emergency milk; and in shrinkage of other source milk.

Proposed by the Dubuque Cooperative Dairy Marketing Association:

Delete § 944.3 (§ 944.1 (c) of present Order No. 44) and substitute therefor the following:

§ 944.3 Quad Cities marketing area. Quad Cities marketing area hereinafter called the "marketing area," means the territory within the corporate limits of the City of Dubuque and the township of Dubuque, sections 1, 2, 3, 11 and 12 of the township of Table Mound, and sections 5 and 6 of the township of Mosalem, all in Dubuque County, Iowa; the territory lying within the corporate limits of the City of Clinton and that part of Camanche township, including the City of Camanche, lying east of sections 2, 11, 14, 23, 26, and 35, all in Clinton County, Iowa; the territory lying within the corporate limits of the Cities

of Davenport and Bettendorf, Iowa, and Rock Island, Moline, East Moline, and Silvis, Illinois, together with the territory lying within the following townships: Davenport, Rockingham and Pleasant Valley in Scott County, Iowa, and Hampton and South Rock Island in Rock Island County, Illinois.

Copies of this notice of hearing may be procured from E. H. McGuire, 335 Federal Building, Sixteenth Street and Second Avenue, Rock Island, Illinois, or from the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: May 2, 1951.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator.
[F. R. Doc. 51-5260; Filed, May 4, 1951;
8:59 a. m.]

[7 CFR, Part 954]

[Docket No. AO 153-A6]

HANDLING OF MILK IN DULUTH-SUPERIOR MARKETING AREA

PROPOSED AMENDMENT TO TENTATIVE MARKETING AGREEMENT AND TO ORDER, AS AMENDED

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and market orders (7 CFR Part 900), notice is hereby given of a public hearing to be held in Court Room 3, Federal Building, Duluth, Minnesota, beginning at 10:00 a. m., c. s. t., May 15, 1951, for the purpose of receiving evidence with respect to proposed amendments hereinafter set forth, or appropriate modification thereof, to the tentative marketing agreement heretofore approved by the Secretary of Agriculture and to the order, as amended, regulating the handling of milk in the Duluth-Superior marketing area. These proposed amendments have not received the approval of the Secretary of Agriculture.

Amendments to the order (No. 54), as amended, for the Duluth-Superior marketing area were proposed as follows:

1. Amend § 954.41 (a) by adding concentrated milk disposed of for fluid milk consumption to the list of products specified therein.

2. Delete § 954.50 (a) and substitute therefor the following:

(a) **Class I milk.** For each delivery period the Class II price for such delivery period plus \$1.50.

3. Delete § 954.51 and substitute therefor the following:

§ 954.51 Butterfat differential to handlers—(a) Class I milk. If the average butterfat content of the milk disposed of as Class I milk by any handler is more or less than 3.5 percent, there shall be added to the Class I price computed pursuant to § 954.50 (a) for each one-tenth of 1 percent that the average butterfat content of such milk is above 3.5 percent,

or subtracted for each one-tenth of 1 percent that the average butterfat content of such milk is below 3.5 percent, an amount computed by multiplying by 1.40 the simple average of the daily wholesale selling prices per pound of Grade A (92-score) bulk creamery butter as reported by the U. S. Department of Agriculture for the Chicago market during the period from the 25th day of the month second preceding such delivery period through the 24th day of the month immediately preceding such delivery period, and divide the result by 10.

(b) **Class II milk.** If the average butterfat content of the Class II milk disposed of by any handler is more or less than 3.5 percent there shall be added to the class price computed pursuant to § 954.50 (b) for each one-tenth of 1 percent that the average butterfat content of such milk is above 3.5 percent, or subtracted for each one-tenth of 1 percent that the average butterfat content of such milk is below 3.5 percent, an amount computed by multiplying by 1.25 the simple average of the daily wholesale selling prices per pound of Grade A (92-score) bulk creamery butter as reported by the U. S. Department of Agriculture for the Chicago market during the period from the 25th day of the month second preceding such delivery period through the 24th day of the month immediately preceding such delivery period and divide the result by 10.

4. Make such other changes as may be required to make the entire order conform with any amendment thereto which may result from this hearing.

Copies of this notice of hearing may be procured from the Market Administrator, 2002 West Superior Street, Duluth 2, Minnesota, or from the Hearing Clerk, Room 1353, South Building, United States Department of Agriculture, Washington 25, D. C., or may be there inspected.

Dated: May 2, 1951.

[SEAL] ROY W. LENNARTSON,
Assistant Administrator.
[F. R. Doc. 51-5261; Filed, May 4, 1951;
8:59 a. m.]

[7 CFR, Part 962]

FRESH PEACHES GROWN IN THE STATE OF GEORGIA

EXPENSES AND FIXING OF RATE OF ASSESSMENT FOR 1951-52 FISCAL PERIOD

Consideration is being given to the following proposals which were submitted by the Industry Committee, established under the marketing agreement, as amended, and Order No. 62, as amended (7 CFR Part 962; 15 F. R. 4105), regulating the handling of fresh peaches grown in the State of Georgia, as the agency to administer the terms and provisions thereof:

(a) That the Secretary of Agriculture find that expenses not to exceed \$23,220.00 will be necessarily incurred by the aforesaid Industry Committee for its maintenance and functioning during the fiscal period beginning on March 1, 1951,

PROPOSED RULE MAKING

under the aforesaid amended marketing agreement and order; and

(b) That the Secretary of Agriculture fix, as the share of such expenses which each handler who first ships peaches shall pay in accordance with the provisions of the aforesaid amended marketing agreement and order during the aforesaid fiscal period, the rate of assessment at \$0.015 per bushel basket of peaches (net weight 50 pounds), or its equivalent of peaches in other containers or in bulk, shipped by him as the first handler thereof during said fiscal period.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposals may do so by submitting the same to the Director, Fruit and Vegetable Branch, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C., not later than the 10th day following publication of this notice in the *FEDERAL REGISTER*.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 7 CFR Part 962; 15 F. R. 4105)

Issued this 2d day of May 1951.

[SEAL]

S. R. SMITH,
Director,

Fruit and Vegetable Branch.

[F. R. Doc. 51-5264; Filed, May 4, 1951;
9:00 a. m.]

[7 CFR, Part 988]

[Docket No. AO 195-A3]

HANDLING OF MILK IN KNOXVILLE, TENN.,
MARKETING AREADECISION WITH RESPECT TO PROPOSED
MARKETING AGREEMENT AND PROPOSED
ORDER AMENDING ORDER NOW IN EFFECT

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was conducted at Knoxville, Tennessee, January 16-20, 1951, pursuant to notice thereof which was issued on December 29, 1950 (15 F. R. 9396).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Assistant Administrator, Production and Marketing Administration, on March 28, 1951, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision in this proceeding. The notice of filing such recommended decision and opportunity to file written exceptions thereto was published in the *FEDERAL REGISTER* on March 31, 1951.

The material issues and the findings and conclusions of the recommended decision (16 F. R. 2852; F. R. Doc. 51-3906) are hereby approved and adopted as the

material issues and findings and conclusions of this decision as if set forth in full herein.

Ruling on exceptions. In arriving at the findings and conclusions included in this decision each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions herein are at variance with the exceptions, such exceptions are overruled.

General findings. (a) The proposed marketing agreement and the order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the act;

(b) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply of and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and in the order, as amended, and as hereby proposed to be further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest;

(c) The proposed marketing agreement and the order, as amended and as hereby proposed to be further amended, will regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in the said marketing agreement upon which a hearing has been held.

Determination of representative period. The month of February 1951 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order amending the order, now in effect, regulating the handling of milk in the Knoxville, Tennessee, marketing area, in the manner set forth in the attached amending order is approved or favored by producers who, during such period, were engaged in the production of milk for sale in the marketing area specified in such marketing order.

Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the Knoxville, Tennessee, Marketing Area," and "Order Amending the Order, as Amended, Regulating the Handling of Milk in the Knoxville, Tennessee, Marketing Area," which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions. These documents shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the *FEDERAL REGISTER*. The regulatory provisions of said marketing agreement are identical with those contained in the order, as amended, and as hereby proposed to be

further amended by the attached order which will be published with this decision.

This decision filed at Washington, D. C., this 2d day of May 1951.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

Order¹ Amending the Order, as Amended, Regulating the Handling of Milk in the Knoxville, Tennessee, Marketing Area

§ 988.0 Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and the applicable rules of practice and procedure, as amended, governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order, as amended, regulating the handling of milk in the Knoxville, Tennessee, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The parity prices of milk as determined pursuant to section 2 of the act are not reasonable in view of the price of feeds, available supplies of feeds and other economic conditions which affect market supply and demand for milk in the said marketing area and the minimum prices specified in the order, as amended, and as hereby further amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk and be in the public interest; and

(3) The said order, as amended, and as hereby further amended, regulates the handling of milk in the same manner as and is applicable only to persons in the respective classes of industrial and commercial activity specified in a marketing agreement upon which a hearing has been held.

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof the handling of milk in the Knoxville, Tennessee,

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure, as amended, governing proceedings to formulate marketing agreements and orders have been met.

marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, and the aforesaid order, as amended, is hereby further amended as follows:

1. In § 988.5 (b) delete subparagraph (1) and substitute the following:

(1) *Class I milk.* The price for Class I milk prior to August 1, 1951, shall be the basic formula price plus \$1.30 per hundredweight. Effective August 1, 1951, the price for Class I milk shall be the basic formula price plus \$1.50 per hundredweight: *Provided*, That, if during the 12 months prior to the month immediately preceding each delivery period, the total volume of milk received from producers by all handlers was more than 110 percent of the total Class I utilization of all handlers during such 12-month period, the Class I price shall be decreased 2.5 cents per hundredweight for each full percentage point that such percentage is more than 110 percent.

2. In § 988.5 (b) delete from subparagraph (2) "Scott Cheese Co., Sweetwater, Tenn."

3. In § 988.5 (c) delete from subparagraph (1) "1.4" and substitute "1.3" thereof.

4. In § 988.5 (c) delete from subparagraph (2) "1.2" and substitute "1.15" thereof.

5. In § 988.4 (d) add the following proviso at the end of subparagraph (3):

Provided further, That if such plant disposes of fluid cream to another non-fluid milk plant which plant conforms with the requirements of subdivisions (i), (ii), and (iii) of this subparagraph, such cream shall be classified as Class II milk.

Order of Secretary Directing That Referendum Be Conducted Among the Producers Supplying Milk to Knoxville, Tenn., Marketing Area; and Designation of Agent to Conduct Such Referendum

Pursuant to section 8c (19) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 608c (19)), it is hereby directed that a referendum be conducted among the producers (as defined in the order, as amended, regulating the handling of milk in the Knoxville, Tennessee, marketing area) who, during the month of February 1951 were engaged in the production of milk for sale in the marketing area specified in the aforesaid order, to determine whether such producers favor the issuance of the order amending the order, as amended, which is a part of the decision of the Secretary of Agriculture filed simultaneously herewith.

Cleo C. Taylor is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders as published in the FEDERAL REGISTER on August 10, 1950 (15 F. R. 5177).

[F. R. Doc. 51-5259; Filed, May 4, 1951; 8:59 a. m.]

DEPARTMENT OF LABOR

Wage and Hour Division

I 29 CFR, Part 700 I

SEMI-VITREOUS AND VITREOUS-CHINA FOOD UTENSILS DIVISION OF CLAY AND CLAY PRODUCTS INDUSTRY IN PUERTO RICO

MINIMUM WAGE RATE

Pursuant to section 5 (a) of the Fair Labor Standards Act of 1938, as amended (hereinafter called the act), the Administrator of the Wage and Hour Division, United States Department of Labor, by Administrative Order No. 403 dated October 19, 1950 (15 F. R. 7125), as amended by Administrative Order No. 404 dated November 17, 1950 (15 F. R. 8054), and Administrative Order No. 406 dated December 8, 1950 (15 F. R. 9077), appointed Special Industry Committee No. 9 for Puerto Rico (hereinafter called the Committee), and directed the Committee to investigate conditions in a number of industries in Puerto Rico specified and defined in said orders, including the semi-vitreous and vitreous-china food utensils division (hereinafter called the "chinaware division") of the clay and clay products industry, and to recommend minimum wage rates for employees engaged in commerce or in the production of goods for commerce in such industries.

For purposes of investigating conditions in and recommending minimum wage rates for the chinaware division of the clay and clay products industry in Puerto Rico, the Committee included three disinterested persons representing the public, a like number representing employers, and a like number representing employees in the chinaware division, and was composed of residents of Puerto Rico and of the United States outside of Puerto Rico.

After investigating economic and competitive conditions in the chinaware division in Puerto Rico, the Committee filed with the Administrator a report containing its recommendation for a minimum wage rate of 40 cents an hour to be paid to employees in the chinaware division who are engaged in commerce or in the production of goods for commerce.

Pursuant to notice published in the FEDERAL REGISTER on February 13, 1951 (16 F. R. 1478) and circulated to all interested persons, a public hearing upon the Committee's recommendation was held before Hearing Examiner Clifford P. Grant, as presiding officer, in Washington, D. C., on March 13, 1951, at which all interested parties were given an opportunity to be heard. After the hearing was closed the record of the hearing was certified to the Administrator by the presiding officer.

Upon reviewing all the evidence in this proceeding and after giving consideration to the provisions of the act, particularly sections 5 and 8 thereof I, as Acting Administrator, have concluded that the recommendation of the Committee for a minimum wage rate in the chinaware division of the clay and clay products industry in Puerto Rico, as defined, was made in accordance with law,

is supported by the evidence adduced at the hearing and, taking into consideration the same factors as are required to be considered by the Committee, will carry out the purposes of sections 5 and 8 of the act.

I have set forth my decision in a document entitled "Findings and Opinion of the Administrator" in the matter of the recommendation of Special Industry Committee No. 9 for Puerto Rico of a minimum wage rate in the semi-vitreous and vitreous-china food utensils division of the clay and clay products industry in Puerto Rico, a copy of which may be had upon request addressed to the Wage and Hour Division, United States Department of Labor, Washington 25, D. C.

Accordingly, notice is hereby given, pursuant to the Administrative Procedure Act (60 Stat. 237; 5 U. S. C. 1001) and the rules of practice governing this proceeding (16 F. R. 1478), that I propose to approve said recommendation of the Committee and, to carry it into effect, I propose to amend the wage order covering the clay and clay products industry in Puerto Rico dated November 28, 1950, which was published on December 1, 1950 (15 F. R. 8217) (29 CFR, Chapter V, Part 700), in the following respects:

1. Change the heading of § 700.1 from "Wage rate" to "Wage rates."

2. Add the following new paragraph to § 700.1 immediately after paragraph (a) thereof:

(b) Wages at a rate of not less than 40 cents per hour shall be paid under section 6 of the Fair Labor Standards Act of 1938, as amended, by every employer to each of his employees in the semi-vitreous and vitreous-china food utensils division of the clay and clay products industry in Puerto Rico who is engaged in commerce or in the production of goods for commerce.

3. Delete in its entirety the "Note" under § 700.3 (b) (1) thereof.

Within 15 days from publication of this notice in the FEDERAL REGISTER, interested parties may submit written exceptions to the proposed action above described. Exceptions should be addressed to the Administrator, Wage and Hour Division, United States Department of Labor, Washington 25, D. C. They should be submitted in quadruplicate and should include supporting reasons for any exceptions.

Signed at Washington, D. C., this 30th day of April 1951.

F. GRANVILLE GRIMES, JR.,
Acting Administrator,
Wage and Hour Division.

[F. R. Doc. 51-5202; Filed, May 4, 1951;
8:46 a. m.]

Division of Public Contracts

I 41 CFR, Part 202 I

ENVELOPE INDUSTRY

NOTICE OF HEARING ON PREVAILING MINIMUM WAGE

The Secretary of Labor, in an amended minimum wage determination issued

PROPOSED RULE MAKING

pursuant to the provisions of the Walsh-Healey Public Contracts Act (act of June 30, 1936, 49 Stat. 2036, 41 U. S. C. secs. 3-45) and effective January 25, 1950 (15 F. R. 382), determined that the minimum wage for persons employed in the performance of contracts with agencies of the United States Government subject to the act for the manufacture or furnishing of the products of the envelope industry shall be not less than 75 cents an hour. This amended determination was based upon information indicating that substantially all employees in the envelope industry are engaged in commerce or in the production of goods for commerce, as defined in the Fair Labor Standards Act, and that as a consequence the Fair Labor Standards Amendments of 1949 require payment of a wage rate of not less than 75 cents an hour to substantially all employees in the industry. This amended determination also provided that learners and handicapped workers might be employed at subminimum rates in accordance with regulations of the Administrator of the Wage and Hour Division of the Department of Labor under section 14 of the Fair Labor Standards Act (29 CFR Parts 522, 524, and 525, respectively).

A wage survey of selected envelope manufacturing establishments made as of October 1950 by the Bureau of Labor Statistics indicates that the 75-cent rate now in effect may not reflect the pre-

vailing minimum wages in the industry; and it is proposed, therefore, to hold a hearing for the purpose of consideration by the Secretary of Labor of an amendment of the current determination.

The envelope industry is defined in the current determination as that industry which manufactures or furnishes envelopes.

Now, therefore, notice is hereby given that a public hearing will be held on June 6, 1951, at 10:00 a. m., in Room 5408 of the Department of Labor, Constitution Avenue and 14th Street Northwest, Washington, D. C., before the Administrator of the Wage and Hour and Public Contracts Divisions or a representative designated to preside in his place, at which hearing all interested persons may appear and submit data, views and argument: (1) As to what are the prevailing minimum wages in the envelope industry; (2) as to whether there should be included in any amended determination for this industry provision for employment of learners and/or apprentices at subminimum rates, and if so, in what occupations, at what subminimum rates, and with what limitations, if any, as to length of period and number or proportion of such subminimum rate employees; and (3) as to the propriety of the present definition of the industry.

Persons intending to appear are requested to notify the Administrator of their intention in advance of the hear-

ing. Written statements in lieu of personal appearance may be filed by mail at any time prior to the date of the hearing, or may be filed with the presiding officer at the hearing. An original and four copies of any such statement should be filed.

Tabulations of wage data prepared by the Bureau of Labor Statistics at the request of the Wage and Hour and Public Contracts Divisions will be made available to interested persons upon request to the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington, D. C. Interested persons are invited to submit wage data, including data as to changes which have taken place in the wage structure of the industry since the time of the survey.

In the discretion of the Presiding Officer, a period of not to exceed 30 days may be allowed for the filing of comment on the evidence and statements introduced into the record of the hearing. In the event such supplemental statements are received an original and four copies of each such statement should be filed.

Signed at Washington, D. C., this 1st day of May 1951.

F. GRANVILLE GRIMES, Jr.,
Acting Administrator, Wage and
Hour and Public Contracts
Divisions.

[F. R. Doc. 51-5227; Filed, May 4, 1951;
8:51 a. m.]

NOTICES

DEPARTMENT OF LABOR

Wage and Hour Division

[Administrative Order 383, Amdt.]

SPECIAL CERTIFICATES FOR EMPLOYMENT
OF LEARNERS AND APPRENTICESDELEGATION OF AUTHORITY TO AUTHORIZED
REPRESENTATIVE OF ADMINISTRATOR TO
GRANT OR DENY APPLICATIONS

Pursuant to authority under the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060, as amended; 29 U. S. C. 201, I, Wm. R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, hereby amend Administrative Order 383 by adding the name of Milton Brooke, who, in addition to those listed therein, is hereby designated as my authorized representative to grant or deny applications for, and to sign, issue and cancel, special certificates authorizing the employment of learners and apprentices at subminimum wages, and to take such other action as may be necessary or appropriate in connection therewith, pursuant to section 14 of the Fair Labor Standards Act of 1938, as amended, and 29 CFR Parts 520, 521 and 522.

Signed in Washington, D. C., this 27th day of April 1951.

WM. R. MCCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 51-5226; Filed, May 4, 1951;
8:50 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 2036 et al.]

ALASKA AIRLINES, INC., ET AL.; KENAI
PENINSULA SERVICE CASENOTICE OF POSTPONEMENT OF ORAL
ARGUMENT

In the matter of the applications of Alaska Airlines, Inc., Hakon Christensen, d/b/a Christensen Air Service, Gentry S. Shuster, d/b/a Safeway Airways, and Vern Dale Trakowski, d/b/a Alaska Scenic Air Service, for certificates of public convenience and necessity or amendments thereof, or exemption orders, authorizing air transportation between points on the Kenai Peninsula, Alaska, and a proceeding instituted by the Board to determine whether the certificate of Pacific Northern Airlines, Inc., shall cease to be effective, insofar as it authorizes air transportation of persons and property to and from Seward, Alaska, for failure to provide service within the period designated by the Board.

Notice is hereby given that oral argument in the above-entitled proceeding, which was assigned to be held before the Board on May 15, 1951, is postponed to a date to be later assigned.

Dated at Washington, D. C., May 1, 1951.

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 51-5235; Filed, May 4, 1951;
8:58 a. m.]

[Regs., Serial No. SR-362]

REEVE ALEUTIAN AIRWAYS, INC.

PILOT FLIGHT TIME LIMITATIONS

Adopted by the Civil Aeronautics Board at its office in Washington, D. C., on the 27th day of April 1951.

Reeve Aleutian Airways, Inc. (RAA), has filed a request, as amended, for authority to deviate from the flight time limitations of paragraph (a) of § 41.54 of the Civil Air Regulations over its route between Anchorage and Adak, Alaska. Section 41.54 (a) currently provides that in aircraft having a crew of one or two pilots a pilot may be scheduled to fly 8 hours or less during any 24 consecutive hours without a rest period; that, if he is scheduled to fly in excess of 8 hours during any 24 consecutive hours, he must be given an intervening rest period at or before the termination of 8 scheduled hours of flight duty; and that this rest period must equal at least twice the number of hours flown since the last preceding rest period, and in no case will this rest period be less than 8 hours.

At present RAA maintains regular flight schedules between Anchorage and Adak which require flights from Anchorage to Dutch Harbor on one day, from Dutch Harbor to Adak the next day, and from Adak direct to Anchorage on the third day, averaging less than 8½ hours in flight in each direction. These flights are being made under the flight time limitations of § 41.55 which permits a pilot to be scheduled to fly in aircraft having 2 pilots and one additional flight

crew member 12 hours during any 24 consecutive hours. Each crew on these flights consists of 2 pilots, a co-pilot, and a mechanic who holds both aircraft and engine mechanic certificates. In effect, RAA seeks appropriate authority to make these flights of a duration of not more than 8 hours and 30 minutes with a crew of 2 pilots and a mechanic certificated as above.

In support of its proposal RAA contends that, if authorized to schedule pilots to fly in either direction over this route in excess of 8 hours but not more than 8 hours and 30 minutes in any 24 consecutive hours, its operations would improve in efficiency and economy without adversely affecting safety. It claims that the extension of pilot flight time would obviate the requirement for intermediate overnight stops at which military facilities are limited and in some respects unsuitable to the civilian needs of passengers and crew and, in addition, would eliminate the need for the services of a third pilot who at present performs approximately 20 minutes of relief duty on each round trip. Finally, RAA claims that the services of the A & E certificated mechanics compensate for the extra pilot flight time requested, since their duties, in addition to those exercised in flight, include some responsibility for the care of passengers, security of aircraft, computation of weight and balance, and pre-flight preparation.

The Board recognizes that the operating conditions in Alaska differ in certain material respects from those in other parts of the United States. Accordingly, this regulation, among others, affords flexibility in our regulations, consistent with the best interests of safety, to meet such special conditions. RAA's experience over a four-month period indicates that the average one-way flight on its Anchorage-Adak schedule was 8 hours and 10 minutes in duration. Without an intermediate overnight stop an authorized schedule of similar duration would reduce civilian demands on military facilities and would avoid a layover period in the interest of all persons concerned. The assignment of an A & E mechanic in the crew permits compensation for additional flight time, particularly if such A & E mechanic possesses qualifications which would enable him to assist the pilot in flight as well as in the pre-flight preparation. Each A & E certificated mechanic, therefore, should be held to special standards of knowledge and skill appropriate to the aircraft flown. We find that safety will not be adversely affected if pilots are permitted to exceed briefly the flight time limitations of § 41.54 (a) and if the A & E certificated mechanics are properly qualified for both flight and ground duties.

This regulation waives the requirements of § 41.54 (a) to permit RAA to schedule 2 pilots, accompanied by an A & E certificated mechanic, to fly without a rest period not more than 8 hours and 30 minutes between Anchorage and Adak during any 24 consecutive hours. If a pilot is scheduled to fly in excess of 8 hours and 30 minutes during any 24 consecutive hours, he shall be given an intervening

rest period at or before the termination of 8 hours and 30 minutes of such flight duty. This rest period must comply with the requirements of § 41.54 (a) and, where a pilot has flown in excess of 8 hours and 30 minutes, of § 41.54 (b).

This regulation further provides that an A & E certificated mechanic, to be eligible for flight duty in these operations, shall meet certain knowledge and skill requirements appropriate to the aircraft flown. The Administrator is to examine each such applicant with respect to (1) his knowledge of aircraft performance, aircraft engine operation, and their limitations, mathematical computations of engine and fuel consumption, including an understanding of basic meteorology as it affects engine operations, and mathematical computations pertaining to aircraft loading and center of gravity, and (2) his skill in recognizing and remedying the malfunctioning of aircraft, aircraft engines, propellers, and appliances; and performance of emergency duties and procedures in respect of aircraft engines, propellers, and appliances.

The Civil Aeronautics Administration is of the opinion that the proposed operation would not adversely affect safety. A number of RAA pilots, dispatchers, and A & E mechanics, those principally responsible for the safety of the proposed operations, have submitted comments urging approval of this request. Due consideration has been given these comments.

For reasons stated above, notice and public procedure hereon are unnecessary, and the Board finds that good cause exists for making this Special Civil Air Regulation effective on less than 30 days' notice.

In consideration of the foregoing the Civil Aeronautics Board hereby makes and promulgates a Special Civil Air Regulation, effective immediately, to read as follows:

1. In lieu of the provisions of paragraph (a) of § 41.54 of the Civil Air Regulations, Reeve Aleutian Airways, Inc., is authorized to schedule a pilot to fly, without a rest period in the course of flight, 8 hours and 30 minutes or less during any 24 consecutive hours between Anchorage and Adak, Alaska. If a pilot is scheduled to fly in excess of 8 hours and 30 minutes during any 24 consecutive hours, he shall be given an intervening rest period at or before the termination of 8 hours and 30 minutes of his scheduled flight duty. This rest period must comply with the requirements of § 41.54 (a) and, where a pilot has flown in excess of 8 hours and 30 minutes, of § 41.54 (b). On these flights the crew shall consist of 2 pilots and an A & E certificated mechanic approved by the Administrator for this duty.

2. The Administrator shall examine each A & E certificated mechanic applying for this duty before certifying to his competency in respect of his special knowledge and skill appropriate to the aircraft used by RAA in operations over this route. The results of this examination shall be a permanent part of RAA's company records.

(a) The knowledge requirements for each applicant shall include the following subjects: aircraft performance, aircraft engine operation and their limitations; mathematical computations of aircraft engine operation and fuel consumption, together with basic meteorology as it affects aircraft engine operations; and mathematical computations pertaining to aircraft loading and center of gravity.

(b) The skill requirements for each applicant shall include the following abilities: recognition and repair of malfunctioning aircraft, aircraft engines, propellers, and appliances; and performance of emergency duties and procedures in respect of aircraft engines, propellers, and appliances.

3. Prior to commencing operations in accordance with the prescribed limitations, Reeve Aleutian Airways, Inc., shall notify the Board in writing of the date on which such service is to begin.

This regulation shall terminate on April 1, 1952, unless sooner superseded or rescinded.

(Sec. 205, 52 Stat. 984; 49 U. S. C. 425. Interprets or applies secs. 601, 602, 604, 605, 52 Stat. 1007, as amended, 1008, 1010; 49 U. S. C. 551, 552, 554, 555)

By the Civil Aeronautics Board.

[SEAL] M. C. MULLIGAN,
Secretary.

[F. R. Doc. 51-5199; Filed, May 4, 1951;
8:45 a. m.]

DEFENSE TRANSPORT ADMINISTRATION

[DTA Delegation 6]

PETROLEUM ADMINISTRATION FOR DEFENSE

DELEGATION OF AUTHORITY WITH RESPECT TO FACILITIES FOR BULK STORAGE OF PE- TROLEUM AND GAS

Pursuant to the Defense Production Act of 1950 (64 Stat. 798), Executive Orders Nos. 10161 (15 F. R. 6105), 10200 (16 F. R. 61), and 10219 (16 F. R. 1983), Defense Production Administration Delegation No. 1 (16 F. R. 738), and Organization Order DTA 1 (15 F. R. 6728):

There is hereby delegated to the Administrator of the Petroleum Administration for Defense, an agency created by Order No. 2591 of the Secretary of the Interior (15 F. R. 6767, 16 F. R. 932, 16 F. R. 2896), the authority to perform the functions and exercise the powers with respect to facilities required for bulk storage of petroleum and gas conferred by said Organization Order DTA 1 upon the Administrator of the Defense Transport Administration reserving unto the said Administrator the Authority, whenever in his judgment the use of any such facilities are required for bulk storage of commodities other than petroleum and gas by reason of the unavailability of other facilities for such storage, to allocate, after consultation with the Administrator of the Petroleum Administration for Defense, the use for temporary periods of any such bulk storage facilities for the storage of such other commodities as in the judgment of the

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Administrator of the Defense Transport Administration may be necessary.

The authority hereby delegated shall be exercised consistently with the plans, policies, and programs of the Defense Transport Administration pertaining to transportation facilities and their use.

The authority herein delegated may be redelegated within the Petroleum Administration for Defense in the discretion of the Administrator of the Petroleum Administration for Defense.

As used in this delegation, the terms "petroleum" and "gas" shall mean "petroleum" and "gas" as defined in sections 901 (c) and (d) of Executive Order No. 10161 as amended.

This delegation shall take effect on May 7, 1951.

Issued at Washington, D. C., this 4th day of May 1951.

JAMES K. KNUDSON,
Administrator.

[F. R. Doc. 51-5351; Filed, May 4, 1951;
11:18 a. m.]

ECONOMIC STABILIZATION AGENCY

Office of Price Stabilization

[Ceiling Price Regulation 7, Section 43,
Special Order 11]

HASPEN BROTHERS, INC.

CEILING PRICES AT RETAIL

Statement of considerations. In accordance with section 43 of Ceiling Price Regulation 7, the applicant named in the accompanying special order, Haspel Brothers, Inc., has applied to the Office of Price Stabilization for maximum resale prices for retail sales of certain of its articles. Applicant has submitted the information required under this section and has produced evidence which in the judgment of the Director indicates that the applicant has complied with other stated requirements.

The Director has determined on the basis of information available to him, including the data submitted by the applicant, that the retail ceiling prices requested and which are established by this special order are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

The special order contains provisions requiring each article to be marked by the applicant with the retail ceiling price established by the accompanying special order. The applicant is required to send purchasers of the articles a copy of this special order and, in specified cases, of subsequent amendments of this special order.

The special order also requires applicant to file with the Distribution Price Branch regular reports setting forth the number of units of each article covered by this special order which applicant has delivered during that period. This requirement conforms with the provisions of section 43, Ceiling Price Regulation 7.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceil-

ing Price Regulation 7, this special order is hereby issued.

1. The following ceiling prices are established for sales after the effective date of this special order by any seller at retail of men's or boys' wear manufactured by Haspel Brothers, Inc., 2527 St. Bernard Avenue, New Orleans, Louisiana having the brand name "Refreshable" and described in the manufacturer's application dated March 6, 1951. The manufacturer's prices listed below are sold on terms of Net 30.

MEN'S AND BOYS' WEAR

Manufacturer's selling price (per unit)	Ceiling price at retail (per unit)
\$2.35	\$3.95
2.70	4.50
2.95	4.95
3.55	5.95
4.15	6.95
4.50	7.50
5.40	9.00
5.65	9.50
6.00	10.00
6.30	10.50
6.85	11.25
6.90	11.50
8.10	13.50
9.00	15.00
9.90	16.50
11.70	19.50
12.00	21.00
12.45	20.75
15.00	25.00
16.50	27.50
16.95	28.25
19.50	32.50
21.90	36.50

2. The retail ceiling price of an article stated in paragraph 1 of this special order shall apply to any other article of the same type which is otherwise priceable under Ceiling Price Regulation 7 by retailers subject to that regulation, having the same selling price to the retailer, the same brand or company name and first sold by the manufacturer after the effective date of this special order.

3. On and after June 4, 1951, Haspel Brothers, Inc., must mark each article listed in paragraph 1 of this special order with the retail ceiling price under this special order, or attach to the article a label, tag, or ticket stating the retail ceiling price. This mark or statement must be in the following form:

OPS—Sec. 43—CPR 7
Price \$-----

On and after July 5, 1951, no retailer may offer or sell the article unless it is marked or tagged in the form stated above.

Upon issuance of any amendment to this special order which either adds an article to those already listed in paragraph 1 of this special order or changes the retail ceiling price of a listed article, Haspel Brothers, Inc., must comply, as to each such article, with the preticketing requirements of this paragraph within 30 days after the effective date of the amendment. After 60 days from the effective date, no retailer may offer or sell the article unless it is ticketed in accordance with the requirements of this paragraph. Prior to the expiration of the 60-day period, unless the article is so ticketed, the retailer shall comply with

the marking, tagging, and posting provisions of the regulation which would apply in the absence of this special order.

4. Within 15 days after the effective date of this special order, the manufacturer shall send a copy of this special order to each purchaser for resale to whom, within two months immediately prior to the effective date, the manufacturer had delivered any article covered in paragraph 1 of this special order. Copies shall be sent to all other purchasers on or before the date of the first delivery of any such article subsequent to the effective date of the special order, and shall be accompanied by copies of each amendment thereto (if any) issued prior to the date of the delivery. Within 15 days after the effective date of any subsequent amendment to the special order, the manufacturer shall send a copy of the amendment to each purchaser to whom, within two months immediately prior to the effective date of such amendment, the seller had delivered any article the sale of which is affected in any manner by the amendment.

5. Within 45 days of the expiration of the first 6 months period following the effective date of this special order and within 45 days of the expiration of each successive 6 months period, the manufacturer shall file with the Distribution Price Branch, Office of Price Stabilization, Washington 25, D. C., a report setting forth the number of units of each article covered by this special order which he has delivered in that 6 months period.

6. The provisions of this special order establish the ceiling price for sales at retail of the articles covered by it regardless of whether the seller is otherwise subject to Ceiling Price Regulation 7 or any other regulation.

7. This special order or any provision thereof may be revoked, suspended, or amended by the Director of Price Stabilization at any time.

8. The provisions of this special order are applicable to the United States and the District of Columbia.

Effective date. This special order shall become effective May 5, 1951.

MICHAEL V. DiSALLE,
Director of Price Stabilization.
MAY 4, 1951.
[F. R. Doc. 51-5325; Filed, May 4, 1951;
8:45 a. m.]

[Ceiling Price Regulation 7, Section 43,
Special Order 12]

JOSEPH & FEISS CO.

CEILING PRICES AT RETAIL

Statement of considerations. In accordance with section 43 of Ceiling Price Regulation 7, the applicant named in the accompanying special order, The Joseph & Feiss Co., has applied to the Office of Price Stabilization for maximum resale prices for retail sales of certain of its articles. Applicant has submitted the information required under this section and has produced evidence which in the judgment of the Director indicates that

the applicant has complied with other stated requirements.

The Director has determined on the basis of information available to him, including the data submitted by the applicant, that the retail ceiling prices requested and which are established by this special order are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

The special order contains provisions requiring each article to be marked by the applicant with the retail ceiling price established by the accompanying special order. The applicant is required to send purchasers of the articles a copy of this special order and, in specified cases, of subsequent amendments of this special order.

The special order also requires applicant to file with the Distribution Price Branch regular reports setting forth the number of units of each article covered by this special order which applicant has delivered during that period. This requirement conforms with the provisions of section 43, Ceiling Price Regulation 7.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceiling Price Regulation 7, this special order is hereby issued.

1. The following ceiling prices are established for sales after the effective date of this special order by any seller at retail of men's suits manufactured by The Joseph & Feiss Co., 2149 West 53d Street, Cleveland 1, Ohio, having the brand name "Mohara" and described in the manufacturer's application dated March 15, 1951. The manufacturer's prices listed below are sold at Net 30.

MEN'S SUITS

Manufacturer's selling price (per unit)	Ceiling price at retail (per unit)
\$27.00	\$45.00
35.85	59.75

2. The retail ceiling price of an article stated in paragraph 1 of this special order shall apply to any other article of the same type which is otherwise priceable under Ceiling Price Regulation 7 by retailers subject to that regulation, having the same selling price to the retailer, the same brand or company name and first sold by the manufacturer after the effective date of this special order.

3. On and after June 4, 1951, The Joseph & Feiss Co., must mark each article listed in paragraph 1 of this special order with the retail ceiling price under this special order, or attach to the article a label, tag or ticket stating the retail ceiling price. This mark or statement must be in the following form:

OPS—Sec. 43—CPR 7
Price \$-----

On and after July 5, 1951, no retailer may offer or sell the article unless it is marked or tagged in the form stated above.

Upon issuance of any amendment to this special order which either adds an article to those already listed in paragraph 1 of this special order or changes the retail ceiling price of a listed article, The Joseph & Feiss Co., must comply as to each such article, with the preticketing

requirements of this paragraph within 30 days after the effective date of the amendment. After 60 days from the effective date, no retailer may offer or sell the article unless it is ticketed in accordance with the requirements of this paragraph. Prior to the expiration of the 60-day period, unless the article is so ticketed, the retailer shall comply with the marking, tagging and posting provisions of the regulation which would apply in the absence of this special order.

4. Within 15 days after the effective date of this special order, the manufacturer shall send a copy of this special order to each purchaser for resale to whom, within two months immediately prior to the effective date, the manufacturer had delivered any article covered in paragraph 1 of this special order. Copies shall be sent to all other purchasers on or before the date of the first delivery of any such article subsequent to the effective date of the special order, and shall be accompanied by copies of each amendment thereto (if any) issued prior to the date of the delivery. Within 15 days after the effective date of any subsequent amendment to the special order, the manufacturer shall send a copy of the amendment to each purchaser to whom, within two months immediately prior to the effective date of such amendment, the seller had delivered any article the sale of which is affected in any manner by the amendment.

5. Within 45 days of the expiration of the first 6 months period following the effective date of this special order and within 45 days of the expiration of each successive 6 months period, the manufacturer shall file with the Distribution Price Branch, Office of Price Stabilization, Washington 25, D. C., a report setting forth the number of units of each article covered by this special order which he has delivered in that 6 months period.

6. The provisions of this special order establish the ceiling price for sales at retail of the articles covered by it regardless of whether the seller is otherwise subject to Ceiling Price Regulation 7 or any other regulation.

7. This special order or any provision thereof may be revoked, suspended, or amended by the Director of Price Stabilization at any time.

8. The provisions of this special order are applicable to the United States and the District of Columbia.

Effective date. This special order shall become effective May 5, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5326; Filed, May 4, 1951;
8:45 a. m.]

[Ceiling Price Regulation 7, Section 43,
Special Order 13]

J. SCHOENEMAN, INC.

CEILING PRICES AT RETAIL

Statement of considerations. In accordance with section 43 of Ceiling Price

Regulation 7, the applicant named in the accompanying special order, J. Schoeneman, Inc., has applied to the Office of Price Stabilization for maximum resale prices for retail sales of certain of its articles. Applicant has submitted the information required under this section and has produced evidence which in the judgment of the Director indicates that the applicant has complied with other stated requirements.

The Director has determined on the basis of information available to him, including the data submitted by the applicant, that the retail ceiling prices requested and which are established by this special order are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

The special order contains provisions requiring each article to be marked by the applicant with the retail ceiling price established by the accompanying special order. The applicant is required to send purchasers of the articles a copy of this special order and, in specified cases, of subsequent amendments of this special order.

The special order also requires applicant to file with the Distribution Price Branch regular reports setting forth the number of units of each article covered by this special order which applicant has delivered during that period. This requirement conforms with the provisions of section 43, Ceiling Price Regulation 7.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceiling Price Regulation 7, this special order is hereby issued.

1. The following ceiling prices are established for sales after the effective date of this special order by any seller at retail of men's and young men's clothing manufactured by J. Schoeneman, Inc., 412 West Redwood Street, Baltimore 1, Maryland, having the brand name "Coronado" and described in the manufacturer's application dated April 12, 1951. The manufacturer's prices listed below are sold on net terms to all customers.

MEN'S AND YOUNG MEN'S CLOTHING

Manufacturer's selling price (per unit)	Ceiling price at retail (per unit)
\$32.53	\$55.00

2. The retail ceiling price of an article stated in paragraph 1 of this special order shall apply to any other article of the same type which is otherwise priceable under Ceiling Price Regulation 7 by retailers subject to that regulation, having the same selling price to the retailer, the same brand or company name and first sold by the manufacturer after the effective date of this special order.

3. On and after June 4, 1951, J. Schoeneman, Inc., must mark each article listed in paragraph 1 of this special order with the retail ceiling price under this special order, or attach to the article a label, tag or ticket stating the retail ceiling price. This mark or statement must be in the following form:

OPS—Sec. 43—CPR 7
Price \$-----

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On and after July 5, 1951, no retailer may offer or sell the article unless it is marked or tagged in the form stated above.

Upon issuance of any amendment to this special order which either adds an article to those already listed in paragraph 1 of this special order or changes the retail ceiling price of a listed article, J. Schoeneman, Inc., must comply, as to each such article, with the preticketing requirements of this paragraph within 30 days after the effective date of the amendment. After 60 days from the effective date, no retailer may offer or sell the article unless it is ticketed in accordance with the requirements of this paragraph. Prior to the expiration of the 60-day period, unless the article is so ticketed, the retailer shall comply with the marking, tagging and posting provisions of the regulation which would apply in the absence of this special order.

4. Within 15 days after the effective date of this special order, the manufacturer shall send a copy of this special order to each purchaser for resale to whom, within two months immediately prior to the effective date, the manufacturer had delivered any article covered in paragraph 1 of this special order. Copies shall be sent to all other purchasers on or before the date of the first delivery of any such article subsequent to the effective date of the special order, and shall be accompanied by copies of each amendment thereto (if any) issued prior to the date of the delivery. Within 15 days after the effective date of any subsequent amendment to the special order, the manufacturer shall send a copy of the amendment to each purchaser to whom, within two months immediately prior to the effective date of such amendment, the seller had delivered any article the sale of which is affected in any manner by the amendment.

5. Within 45 days of the expiration of the first 6 months period following the effective date of this special order and within 45 days of the expiration of each successive 6 months period, the manufacturer shall file with the Distribution Price Branch, Office of Price Stabilization, Washington 25, D. C., a report setting forth the number of units of each article covered by this special order which he has delivered in that 6 months period.

6. The provisions of this special order establish the ceiling price for sales at retail of the articles covered by it regardless of whether the seller is otherwise subject to Ceiling Price Regulation 7 or any other regulation.

7. This special order or any provision thereof may be revoked, suspended, or amended by the Director of Price Stabilization at any time.

8. The provisions of this special order are applicable to the United States and the District of Columbia.

Effective date. This special order shall become effective May 5, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5327; Filed, May 4, 1951;
8:45 a. m.]

[Ceiling Price Regulation 7, Section 43,
Special Order 14]

FLEXEES, INC.

CEILING PRICES AT RETAIL

Statement of considerations. In accordance with section 43 of Ceiling Price Regulation 7, the applicant named in the accompanying special order, Flexees, Inc., has applied to the Office of Price Stabilization for maximum resale prices for retail sales of certain of its articles. Applicant has submitted the information required under this section and has produced evidence which in the judgment of the Director indicates that the applicant has complied with other stated requirements.

The Director has determined on the basis of information available to him, including the data submitted by the applicant, that the retail ceiling prices requested and which are established by this special order are no higher than the level of ceiling prices under Ceiling Price Regulation 7.

The special order contains provisions requiring each article to be marked by the applicant with the retail ceiling price established by the accompanying special order. The applicant is required to send purchasers of the articles a copy of this special order and, in specified cases, of subsequent amendments of this special order.

The special order also requires applicant to file with the Distribution Price Branch regular reports setting forth the number of units of each article covered by this special order which applicant has delivered during the reporting period. This requirement conforms with the provisions of section 43, Ceiling Price Regulation 7.

Special provisions. For the reasons set forth in the statement of considerations and pursuant to section 43 of Ceiling Price Regulation 7, this special order is hereby issued.

1. The following ceiling prices are established for sales after the effective date of this special order by any seller at retail of women's bathing suits manufactured by Flexees, Inc., 417 Fifth Avenue, New York 16, New York, having the brand name "Sea Molds," and described in the manufacturer's application, dated March 9, 1951. The manufacturer's prices listed below are sold at a discount of 8/10 EOM.

WOMEN'S BATHING SUITS

Manufacturer's selling price (per dozen)	Ceiling price at retail (per unit)
\$90.00	\$12.95

2. The retail ceiling price of an article stated in paragraph 1 of this special order shall apply to any other article of the same type which is otherwise priceable under Ceiling Price Regulation 7 by retailers subject to that regulation, having the same selling price to the retailer, the same brand or company name and first sold by the manufacturer after the effective date of this special order.

3. On and after June 4, 1951, Flexees, Inc., must mark each article listed in paragraph 1 of this special order with the retail ceiling price under this special

order, or attach to the article a label, tag or ticket stating the retail ceiling price. This mark or statement must be in the following form:

OPS—Sec. 43—CPR 7
Price \$-----

On and after July 5, 1951, no retailer may offer or sell the article unless it is marked or tagged in the form stated above.

Upon issuance of any amendment to this special order which either adds an article to those already listed in paragraph 1 of this special order or changes the retail ceiling price of a listed article, Flexees, Inc., must comply, as to each such article, with the preticketing requirements of this paragraph within 30 days after the effective date of the amendment. After 60 days from the effective date, no retailer may offer or sell the article unless it is ticketed in accordance with the requirements of this paragraph. Prior to the expiration of the 60-day period, unless the article is so ticketed, the retailer shall comply with the marking, tagging and posting provisions of the regulation which would apply in the absence of this special order.

4. Within 15 days after the effective date of this special order, the manufacturer shall send a copy of this special order to each purchaser for resale to whom, within two months immediately prior to the effective date, the manufacturer had delivered any article covered in paragraph 1 of this special order. Copies shall be sent to all other purchasers on or before the date of the first delivery of any such article subsequent to the effective date of the special order, and shall be accompanied by copies of each amendment thereto (if any) issued prior to the date of the delivery. Within 19 days after the effective date of any subsequent amendment to the special order, the manufacturer shall send a copy of the amendment to each purchaser to whom, within two months immediately prior to the effective date of such amendment, the seller had delivered any article the sale of which is affected in any manner by the amendment.

5. Within 45 days of the expiration of the first 6 months' period following the effective date of this special order and within 45 days of the expiration of each successive 6 months' period, the manufacturer shall file with the Distribution Price Branch, Office of Price Stabilization, Washington 25, D. C., a report setting forth the number of units of each article covered by this special order which he has delivered in that 6 months' period.

6. The provisions of this special order establish the ceiling price for sales at retail of the articles covered by it regardless of whether the seller is otherwise subject to Ceiling Price Regulation 7 or any other regulation.

7. This special order or any provision thereof may be revoked, suspended, or amended by the Director of Price Stabilization at any time.

8. The provisions of this special order are applicable to the United States and the District of Columbia.

Effective date. This special order shall become effective May 5, 1951.

MICHAEL V. DISALLE,
Director of Price Stabilization.

MAY 4, 1951.

[F. R. Doc. 51-5328; Filed, May 4, 1951;
8:45 a. m.]

[Ceiling Price Regulation 7, Section 43,
Special Order 6]

S. AUGSTEIN & CO., INC.

CEILING PRICES AT RETAIL

EDITORIAL NOTE: In Federal Register Document 51-4879, appearing at page 3599 of the issue for Thursday, April 26, 1951, the original document has been corrected as follows:

In paragraph 1, the word "women's" has been substituted for the word "men's" wherever it appears so that paragraph 1 now reads as follows:

1. The following ceiling prices are established for sales after the effective date of the special order by any seller at retail of women's suits, women's slacks, and women's shorts manufactured by S. Augstein & Co., Inc., 15-58 One Hundred Twenty-seventh Street, College Point, New York, having the brand name "Sacony" and described in the manufacturer's application dated March 16, 1951. The manufacturer's prices listed below are subject to a discount of \$10 EOM.

WOMEN'S SUITS, SLACKS, AND SHORTS

Manufacturer's selling price (per unit)	Ceiling price at retail (per unit)
\$3.00	\$4.95
4.25	6.95
5.00	7.95
5.50	8.95
14.50	24.50
17.75	29.95

[Delegation of Authority 6, Supp. 2]

CHIEFS OF BRANCHES OF TRANSPORTATION,
PUBLIC UTILITIES AND FUEL DIVISION

REDELEGATION OF AUTHORITY TO REQUEST
FURTHER INFORMATION CONCERNING PROPOSED CEILING PRICES

By virtue of the authority vested in me as Director of the Transportation, Public Utilities and Fuel Division of the Office of Price Operations, Office of Price Stabilization by Delegation of Authority No. 6, Supplement 1 (16 F. R. 3672), this delegation of authority is hereby issued.

Authority is hereby delegated to the Chiefs of the Branches of the Transportation, Public Utilities and Fuel Division of the Office of Price Operations, Office of Price Stabilization to request further information from a seller who has submitted a proposed ceiling price for approval. This delegation applies whenever a Ceiling Price Regulation permits the seller to operate at the ceiling price proposed by him, whether immediately or after the expiration of a prescribed period of time, unless and until he is notified by the Director of Price Stabilization that the proposed ceiling price has been disapproved or that more information is required.

has been disapproved or that more information is required.

This delegation of authority shall take effect on May 5, 1951.

RICHARD L. BOWDITCH,
Director, Transportation, Public Utilities and Fuel Division,
Office of Price Operations.

MAY 4, 1951.

[F. R. Doc. 51-5356; Filed, May 4, 1951;
11:54 a. m.]

Office of Price Stabilization

[Delegation of Authority 6, Supp. 3]

CHIEFS OF BRANCHES OF CONSUMER DURABLE GOODS DIVISION

REDELEGATION OF AUTHORITY TO REQUEST
FURTHER INFORMATION CONCERNING PROPOSED CEILING PRICES

By virtue of the authority vested in me as Director of the Consumer Durable Goods Division of the Office of Price Operations, Office of Price Stabilization by Delegation of Authority No. 6, Supplement 1 (16 F. R. 3672) this delegation of authority is hereby issued.

Authority is hereby delegated to the Chiefs of the Branches of the Consumer Durable Goods Division of the Office of Price Operations, Office of Price Stabilization to request further information from a seller who has submitted a proposed ceiling price for approval. This delegation applies whenever a Ceiling Price Regulation permits the seller to operate at the ceiling price proposed by him, whether immediately or after the expiration of a prescribed period of time, unless and until he is notified by the Director of Price Stabilization that the proposed ceiling price has been disapproved or that more information is required.

This delegation of authority shall take effect on May 5, 1951.

HAROLD B. WESS,
Director, Consumer Durable Goods Division, Office of Price Operations.

MAY 4, 1951.

[F. R. Doc. 51-5357; Filed, May 4, 1951;
11:54 a. m.]

[Delegation of Authority 6, Supp. 4]

CHIEFS OF BRANCHES OF SERVICES,
EXPORT-IMPORT DIVISION

REDELEGATION OF AUTHORITY TO REQUEST
FURTHER INFORMATION CONCERNING PROPOSED CEILING PRICES

By virtue of the authority vested in me as Director of the Services, Export-Import Division of the Office of Price Operations, Office of Price Stabilization by Delegation of Authority No. 6, Supplement 1 (16 F. R. 3672) this delegation of authority is hereby issued.

Authority is hereby delegated to the Chiefs of the Branches of the Services, Export-Import Division of the Office of

Price Operations, Office of Price Stabilization to request further information from a seller who has submitted a proposed ceiling price for approval. This delegation applies whenever a Ceiling Price Regulation permits the seller to operate at the ceiling price proposed by him, whether immediately or after the expiration of a prescribed period of time, unless and until he is notified by the Director of Price Stabilization that the proposed ceiling price has been disapproved or that more information is required.

This delegation of authority shall take effect on May 5, 1951.

MAX L. FEINBERG,
Acting Director Services, Export-Import Division, Office of Price Operations.

MAY 4, 1951.

[F. R. Doc. 51-5358; Filed, May 4, 1951;
11:54 a. m.]

[Delegation of Authority 6, Supp. 5]

CHIEFS OF BRANCHES OF FOOD AND RESTAURANT DIVISION

REDELEGATION OF AUTHORITY TO REQUEST
FURTHER INFORMATION CONCERNING PROPOSED CEILING PRICES

By virtue of the authority vested in me as Director of the Food and Restaurant Division of the Office of Price Operations, Office of Price Stabilization by Delegation of Authority No. 6, Supplement 1 (16 F. R. 3672), this delegation of authority is hereby issued.

Authority is hereby delegated to the Chiefs of the Branches of the Food and Restaurant Division of the Office of Price Operations, Office of Price Stabilization to request further information from a seller who has submitted a proposed ceiling price for approval. This delegation applies whenever a Ceiling Price Regulation permits the seller to operate at the ceiling price proposed by him, whether immediately or after the expiration of a prescribed period of time, unless and until he is notified by the Director of Price Stabilization that the proposed ceiling price has been disapproved or that more information is required.

This delegation of authority shall take effect on May 5, 1951.

J. B. HUTSON,
Director, Foods and Restaurant Division, Office of Price Operations.

MAY 4, 1951.

[F. R. Doc. 51-5359; Filed, May 4, 1951;
11:54 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

COOPERATION REQUESTED OF AMATEURS TO MAKE FREQUENCIES AVAILABLE FOR MILITARY MANEUVERS

APRIL 25, 1951.

The Federal Communications Commission has been advised by the United

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States Army of large-scale military maneuvers to be staged in North and South Carolina from August 6, 1951, to September 7, 1951. Because of the size and nature of these maneuvers, the use of the frequency band 3700-3900 kc will be required in addition to frequencies outside this amateur band to be made available temporarily for military use.

The problem is essentially one of interference from amateur operations to low-power military training operations in the southeast portion of the United States. Therefore, on behalf of the Army and with the concurrence of the American Radio Relay League, the Commission requests the voluntary cooperation of radio amateurs within interference range of the maneuver area to observe the conditions set forth below:

1. For amateurs in North Carolina, South Carolina, Georgia, Delaware, Maryland, Virginia, West Virginia, the District of Columbia, and in Tennessee east of and including Hamilton, Rhea, Roane, Anderson and Campbell counties: No operation in the band of frequencies 3700-3900 kc during the period of the maneuvers.

2. For amateurs outside the area defined in (1) above and east of the Mississippi River:

(a) No special limitations during daylight hours.

(b) No night time operation (local sunset to local sunrise), in the band of frequencies 3700-3900 kc during the period of the maneuvers.

3. For amateurs west of the Mississippi River or outside the Continental United States: No special limitations.

The Commission and the United States Army officials are of the opinion that careful observance of the limitations proposed herein will permit essential radiocommunication in connection with the maneuvers to be conducted with a minimum of harmful interference. Since the military operations will be conducted with low power, the absence of any signal should not be construed as indication that maneuver operations are not in progress.

The Commission wishes to emphasize that this public notice is a request for the cooperation of the radio amateurs and an opportunity to further enhance the excellent reputation for cooperation which that group already enjoys.

[SEAL]

T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5208; Filed, May 4, 1951;
8:47 a. m.]

EXPERIMENTAL CLASS 2 (MARITIME) STATIONS

ORDER EXTENDING LICENSE TERM

In the matter of extension of the license term of certain outstanding Experimental Class 2 (Maritime) station licenses.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 25th day of April 1951;

The Commission having before it a proposal to extend the license term of

Experimental Class 2 (Maritime) stations of the Petroleum Industry authorized for operation on Maritime Mobile frequencies in the 2-3 megacycle band which term will expire on May 1, 1951; and

It appearing, that an extension period of a duration of that proposed will permit the problem of the ultimate disposition of the above-referred to stations to be resolved and will also permit a reasonable period thereafter within which licensees may take such action regarding their outstanding authorizations as may be appropriate; and

It further appearing, that a general extension as herein ordered of the term of such stations is desirable in order to avoid the necessity of individual modification of authorizations covering these stations with the attendant burden on both the licensees and the Commission;

It is ordered, That the license term of every outstanding Experimental Class 2 station of the Petroleum Industry which operates on Maritime Mobile frequencies in the 2-3 megacycle band which normally would expire on May 1, 1951, be extended to August 1, 1951 and that each license as extended be in exact accordance with all other terms contained therein;

It is further ordered, That this order shall become effective immediately.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5205; Filed, May 4, 1951;
8:46 a. m.]

VHF SPECIALIZED OPERATIONAL RADIOTELEPHONE MARITIME EXPERIMENTAL CLASS 2 STATIONS

ORDER EXTENDING LICENSE TERM

In the matter of extension of the license term of outstanding VHF Specialized Operational Radiotelephone Maritime Experimental Class 2 stations until November 1, 1951.

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C., on the 25th day of April 1951;

The Commission having before it a proposal to extend the license term of Experimental Class 2 VHF Specialized Operational Radiotelephone Maritime stations authorized for the purpose of conducting experimentations in connection with the development and testing of ship to shore and ship to ship radiotelephone systems designed to serve the business and operational needs of ships, which term will end on May 1, 1951; and

It appearing, that it is anticipated that the operation of VHF Specialized Operational Radiotelephone Maritime stations will, within the extension period set forth herein, be removed from the Experimental Service and placed in a "regular" service and that within such period all outstanding experimental licenses for such stations which will be eligible to be converted into "regular" licenses will be required to be so converted; and

It further appearing, that pending such "regularization" and conversion, and in order to minimize the workload on both the licensees of the stations and the Commission, it would be desirable to extend for a temporary period the license term of all such experimental stations;

It is ordered, That the license term of every outstanding Experimental Class 2 Specialized Operational Radiotelephone Maritime station license which normally would expire May 1, 1951, be extended to November 1, 1951, and that each license as extended be in exact accordance with all other terms contained therein;

It is further ordered, That this order shall become effective immediately.

FEDERAL COMMUNICATIONS
COMMISSION,

[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5206; Filed, May 4, 1951;
8:46 a. m.]

[Docket No. 9552]

THEATRE TELEVISION SERVICE

NOTICE OF HEARING DATE

In the matter of allocation of frequencies and promulgation of rules and regulations for a Theatre Television Service; Docket No. 9552.

1. On January 11, 1950, the Commission issued a notice of hearing on petitions for rule making (FCC 50-41) in the above-entitled proceeding advising that a fact-finding hearing would be held upon the following issues:

(a) To determine whether the existing and proposed transmission requirements for theatre television can be satisfied by existing and proposed common carrier wire facilities or by existing and proposed common carrier fixed station facilities operated in bands of frequencies now allocated to such stations.

(b) To determine the orders of frequencies and the spectrum space required, if any, at each order of frequency which would be necessary to establish a theatre television service.

(c) To obtain full information concerning existing or proposed methods or systems for exhibiting television programs on large screens in motion picture theatres or elsewhere.

(d) To obtain full information concerning existing or proposed methods or systems for transmitting or relaying television programs from the point of pickup to the exhibiting theatre, by use of radio frequencies, coaxial cable, wire, or other means, including intra-city and inter-city transmission.

(e) To obtain full information concerning any technical data obtained in experimental operations conducted in the theatre television field, or otherwise available.

(f) To obtain full information concerning any non-technical data obtained in experimental operations conducted in the theatre television field, or otherwise available, including public need or demand for the proposed service, public need or desires in theatre television programs, approximate uses for the service, and commercial feasibility of the service.

(g) To obtain full information concerning plans or proposals looking toward the establishment of theatre television on a commercial or noncommercial basis.

(h) To determine whether persons engaged in furnishing theatre television services would be engaged as common carriers for hire in interstate communications by wire or radio, within the meaning of section 3 (h) of the Communications Act of 1934, as amended.

(i) To determine whether, if frequencies are to be allocated for the purpose of providing a theatre television service, such service should be established on a common carrier or non-common carrier basis, and if on a non-common carrier basis, the conditions under which such service would be made available.

(j) In the light of the evidence adduced under the foregoing issues, to determine whether or not the public interest would be served by the issuance of a proposal for allocation of frequencies to a theatre television service and by the promulgation of proposed rules and engineering standards governing such a service.

2. Notice is hereby given that a hearing will be held in the above-entitled proceeding before the Commission en banc commencing on September 17, 1951, at 10:00 a. m., in Washington, D. C. (at a place to be designated by subsequent notice) for the purpose of hearing testimony and receiving evidence regarding the aforementioned issues. Parties who have heretofore filed timely appearances in this proceeding and who desire to participate in the hearing should file a statement with the Commission on or before August 15, 1951, setting forth a list of their witnesses who will testify at the hearing together with the subjects with respect to which testimony will be adduced and evidence offered.

Adopted: April 25, 1951.

Released: April 25, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5207; Filed, May 4, 1951;
8:47 a. m.]

[Docket No. 9683]

STATION KFTM

ORDER CONTINUING HEARING

In the matter of revocation of license of Station KFTM, Fort Morgan, Colorado; Docket No. 9683.

At a session of the Federal Communications Commission held at its offices in Washington, D. C.;

The Commission having under consideration a petition filed April 25, 1951, by Fort Morgan Broadcasting Company, licensee of Station KFTM, Fort Morgan, Colorado, requesting a postponement of the oral argument in the above-entitled proceeding involving the revocation of license of Station KFTM, now scheduled for April 27, 1951; and

It appearing, that the General Counsel of the Commission, the only other

participant in this proceeding, has no objection to a grant of the petition; that good cause has been shown by the petitioner; and that the oral argument herein can be held on May 4, 1951, following the oral arguments now scheduled for that date;

It is ordered: This 26th day of April 1951, that the above-described petition of Fort Morgan Broadcasting Company is granted and that the oral argument in the above-entitled proceeding now scheduled for April 27, 1951, is continued to May 4, 1951, to follow the oral arguments now scheduled for that date.

Released: April 27, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5210; Filed, May 4, 1951;
8:47 a. m.]

[Docket No. 9916]

CENTERVILLE BROADCASTING CO. (KCOG)

ORDER CONTINUING HEARING

In re application of Centerville Broadcasting Company (KCOG), Centerville, Iowa, for modification of license; Docket No. 9916, File No. BML-1439.

The Commission having under consideration a petition filed April 10, 1951, by Galesburg Broadcasting Company, licensee of Radio Station WGIL, Galesburg, Illinois, a party respondent in the above-entitled proceeding, requesting a continuance of the hearing presently scheduled for May 4, 1951, at Washington, D. C., in the proceeding upon the above-entitled application for modification of license; and

It appearing, that no opposition to the granting of the instant petition has been filed with the Commission;

It is ordered: This 20th day of April 1951, that the petition is granted; and that the hearing in the above-entitled proceeding is continued to 10:00 a. m., Thursday, July 5, 1951, at Washington, D. C.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5211; Filed, May 4, 1951;
8:47 a. m.]

requesting an indefinite continuance of the hearing presently scheduled for May 7, 1951, at Fort Bragg, California, in the proceeding upon its above-entitled application;

It is ordered: This 20th day of April 1951, that the petition is granted; and that the hearing in the above-entitled application is continued indefinitely.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5212; Filed, May 4, 1951;
8:47 a. m.]

[Docket No. 9918]

STATION KTXC

ORDER CONTINUING HEARING

In the matter of renewal of license of Station KTXC, Big Spring, Texas; Docket No. 9918, File No. BR-2332.

The Commission having under consideration a petition filed April 16, 1951, by Big State Broadcasting Company, licensee of Station WTXC, Big Spring, Texas, requesting a continuance of the hearing to July 16, 1951, in the proceeding upon its above-entitled application for renewal of license;

It is ordered: This 20th day of April, 1951, that the petition is granted; and that the hearing in the above-entitled matter is continued to 10:00 a. m., Monday, July 16, 1951, at Big Spring, Texas.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5213; Filed, May 4, 1951;
8:47 a. m.]

[Docket No. 9918, 9945]

BIG STATE BROADCASTING CORP. (KTXC)
AND LEONARD R. LYON

ORDER DESIGNATING APPLICATION FOR CON-
SOLIDATED HEARING ON STATED ISSUES

In re applications of Big State Broadcasting Corporation (KTXC) Big Spring, Texas, for renewal of license, Docket No. 9918, File No. BR-2332; Leonard R. Lyon, El Reno, Oklahoma, for construction permit, Docket No. 9945, File No. BP-7869.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 25th day of April 1951.

The Commission having under consideration the above-entitled application of Leonard R. Lyon requesting a permit to construct a new standard broadcast station to operate on frequency 1490 kilocycles, with 100 watts power, daytime only at El Reno, Oklahoma;

It appearing, that the said application for construction permit was designated for hearing by Commission order of April 5, 1951 on engineering issues only and that said order found that the applicant is legally, technically, finan-

[Docket No. 9917]

MENDOCINO COAST BROADCASTING CO.
(KDAC)

ORDER CONTINUING HEARING

In re application of Tony R. Amarante, John A. Brush, Edward Mertle and Mathew Thompson, d/b as Mendocino Coast Broadcasting Co., permittee of Station KDAC Fort Bragg, California, for license to cover construction permit; Docket No. 9917, File No. BL-3190.

The Commission having under consideration a petition filed April 17, 1951, by Mendocino Coast Broadcasting Company (KDAC), Fort Bragg, California,

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cially and otherwise qualified to operate the proposed station; and

It further appearing, that the above-entitled application of Big State Broadcasting Corporation for renewal of license of Station KTXC, Big Spring, Texas was designated for hearing by Commission order of March 14, 1951 on issues specified therein which may affect the legal, technical, financial and other qualifications of Leonard R. Lyon, an officer and stockholder of Big State Broadcasting Corporation to construct and operate the proposed station at El Reno, Oklahoma;

It is ordered, That the Commission's action of April 5, 1951 designating for hearing the above-entitled application of Leonard R. Lyon for construction permit is set aside; and

It is further ordered, That pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Leonard R. Lyon is designated for hearing in a consolidated proceeding with the said application of Big State Broadcasting Corporation at 10:00 a. m., on July 16, 1951, at Big Spring, Texas, upon the following issues:

1. To determine the legal, technical, financial and other qualifications of the individual applicant to construct and operate the proposed station particularly in the light of evidence adduced under the issues in the Commission's order of March 14, 1951, designating for hearing the above-entitled application of Big State Broadcasting Corporation for renewal of license of Station KTXC.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with station KBIG, Guthrie, Oklahoma, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

6. To determine whether the public interest, convenience or necessity would be served by a grant of the above-entitled application for construction permit.

It is further ordered, That the order of March 14, 1951, designating for hearing the said application for renewal of license of Station KTXC is amended to include the said application of Leonard R. Lyon for construction permit; and

It is further ordered, That Leader Publishing Company, permittee of Station KBIG, Guthrie, Oklahoma, is made a party to the proceeding with reference to the application of Leonard R. Lyon only.

Released: April 26, 1951.

FEDERAL COMMUNICATIONS
COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 51-5209; Filed, May 4, 1951;
8:47 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G-1594]

OHIO FUEL GAS CO.

ORDER FIXING DATE OF HEARING

On January 23, 1951, The Ohio Fuel Gas Company (Applicant), an Ohio corporation, with its principal place of business at Columbus, Ohio, filed an application for a certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act, as amended, authorizing the conversion, construction and operation of certain natural-gas transmission facilities, subject to the jurisdiction of the Commission, all as more fully described in the application on file with the Commission and open to public inspection.

The Commission finds: This proceeding is a proper one for disposition under the provisions of § 1.32 (b) (18 CFR 1.32 (b)) of the Commission's rules of practice and procedure. Applicant having requested that its application be heard under the shortened procedure provided by the aforesaid rule for non-contested proceedings, and no request to be heard, protest or petition having been filed subsequent to the giving of due notice of the filing of the application, including publication in the *FEDERAL REGISTER* on February 16, 1951 (16 F. R. 1643).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on May 28, 1951, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: May 1, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5215; Filed, May 4, 1951;
8:48 a. m.]

[Docket No. G-1610, G-1611]

MONTANA-DAKOTA UTILITIES CO. AND
BILLINGS GAS CO.

ORDER CONSOLIDATING PROCEEDINGS AND
FIXING DATE OF HEARING

In the matters of Montana-Dakota Utilities Co., Docket No. G-1610; Billings Gas Company, Docket No. G-1611.

On February 13, 1951, Montana-Dakota Utilities Co. (Montana-Dakota), a Delaware corporation having its principal place of business at 831 Second Avenue South, Minneapolis, Minnesota, filed an application as supplemented on February 23, April 9, and April 16, 1951, in Docket No. G-1610 for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the acquisition, construction and operation of certain natural-gas facilities, subject to the jurisdiction of the Commission as fully described in the application and the supplements thereto on file with the Commission and open to public inspection.

On February 13, 1951, Billings Gas Company (Billings), a Montana corporation having its principal place of business at Billings, Montana, filed an application in Docket No. G-1611 pursuant to section 7 (b) of the Natural Gas Act for permission and approval to abandon by sale to Montana-Dakota all of its facilities, subject to the jurisdiction of the Commission, and the service rendered by means of facilities as fully described in the application on file with the Commission and open to public inspection.

The Commission finds:

(1) The applicants have requested that their applications be heard under the shortened procedure provided for by § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)) for non-contested proceedings, and it appears to be a proper one for disposition under the aforesaid rule, no request to be heard, protest or petition raising an issue of substance having been filed subsequent to the giving of due notice of the filing of the applications including publications in the *FEDERAL REGISTER* on March 6, 1951 (16 F. R. 2108).

(2) Orderly procedure requires that the proceedings in Docket Nos. G-1610 and G-1611 be consolidated for purpose of hearing and disposition, as herein-after ordered.

The Commission orders:

(A) The proceedings in Docket Nos. G-1610 and G-1611 be and they are hereby consolidated for the purpose of hearing and disposition.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on May 16, 1951, at 9:30 a. m., e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania NW., Washington, D. C., concerning the matters involved and the issues presented by such applications: *Provided, however,* That the Commission may, after a non-contested hearing, forthwith dispose of the proceedings pursuant to the provisions of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure.

sions of § 1.32 of the Commission's rules of practice and procedure.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: May 1, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5214; Filed, May 4, 1951;
8:48 a. m.]

[Docket No. G-1638]

MANUFACTURERS LIGHT AND HEAT CO.

ORDER FIXING DATE OF HEARING

APRIL 30, 1951.

On March 21, 1951, the Manufacturers Light and Heat Company (Applicant), a Pennsylvania corporation of Pittsburgh, Pennsylvania, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of approximately 172 miles of natural-gas transmission pipeline together with appurtenant facilities extending from a point of interconnection with the 6-inch gas pipeline of Trans-Penn Transit Corporation in Clinton County, Pennsylvania, through Clinton, Centre, Clearfield, Indiana, Westmoreland and Allegheny Counties in as direct a line as possible to a point in Allegheny County on the west side of the Monongahela River within the northern limits of the City of Clairton, and thence to a junction of certain existing pipelines of Applicant on the Tannehill farm northwest of Canonsburg in Chartiers Township, Washington County, Pennsylvania, all as more fully described in the application.

Applicant stated that if it obtains a certificate of public convenience and necessity at an early date it will be able to complete the proposed construction during the present construction season.

The Commission finds: Good cause exists and it is reasonable to set this application for hearing with less than the normal 15 days' notice.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a hearing be held on May 8, 1951, at 10:00 a. m. e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW, Washington, D. C., concerning the matters involved and the issues presented by such application.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: May 1, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5218; Filed, May 4, 1951;
8:48 a. m.]

[Project Nos. 2005, 2018, 2028]

OAKDALE IRRIGATION DISTRICT ET AL.
NOTICE OF ORDER DISMISSING APPLICATIONS
FOR PRELIMINARY PERMITS AND ISSUING
AMENDMENT TO LICENSE

MAY 1, 1951.

In the matters of Oakdale Irrigation District and South San Joaquin Irrigation District, Project Nos. 2005 and 2018; and Tuolumne County Water District No. 2, Project No. 2028.

Notice is hereby given that, on March 19, 1951, the Federal Power Commission issued its order entered March 13, 1951, in the above-entitled matters, dismissing applications for preliminary permits for Project No. 2018 and for Project No. 2028 (in part); and, issuing amendment to license (Major) in Project No. 2005.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5216; Filed, May 4, 1951;
8:48 a. m.]

[Project No. 2030]

NORTHWEST POWER SUPPLY CO.

ORDER FIXING HEARING

APRIL 24, 1951.

On May 23, 1949, Northwest Power Supply Company, of Portland, Oregon, filed an application for a license under the Federal Power Act to authorize the construction, operation and maintenance of a proposed hydroelectric development designated in the records of the Commission as Project No. 2030 and known as the Pelton power project to be located in and along the Deschutes River in the vicinity of Madras, Oregon.

The proposed project, if constructed, would be in Jefferson County, Oregon, and would affect lands of the United States and tribal and allotted lands within the Warm Springs Indian Reservation.

On April 9, 1951, the applicant filed supplemental application proposing additional project works.

The proposed project, as described in the application as supplemented, would consist of a concrete arch dam approximately 190 feet high with crest length of about 850 feet; a separate spillway structure, a reservoir approximately 7.2 miles long and less than one-quarter mile wide at its widest point with storage capacity of 26,000 acre-feet and surface area of 460 acres; penstocks; a powerhouse immediately downstream from the dam containing three 52,000-horsepower turbines connected to three 40,000-kilovolt ampere generators; a switch yard; transmission lines; and appurtenant facilities. In addition, the applicant proposes to construct a re-regulating dam about 3 miles downstream from the main dam for the purpose of re-regulating the discharge from the generating units and thus provide a relatively uniform stream flow below the project; an egg-taking station with holding pools and an adequate water supply at the site of the re-regulating dam; fish traps in the re-regulating dam and a fish ladder leading from the traps to the holding pools; to

expand the Metolius hatchery or construct a new hatchery wherever desired by the Fish Commission of Oregon; provide trucks for the transportation of eggs and fingerlings; and provide whatever land may be needed for the above-described fish facilities.

Substantial public interest in the applicant's proposal to construct the project is indicated by the number of communications urging approval or disapproval of the application. In addition, requests for a public hearing have been received.

The Commission finds: It is in the public interest to hold a public hearing respecting the matters involved and the issues presented in this proceeding.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by the Federal Power Act, particularly sections 4, 6 and 308 thereof, and the Commission's rules of practice and procedure (in force January 1, 1948 as amended and supplemented), a public hearing be held commencing on the 4th day of June, 1951 at 10:00 a. m. (P. S. T.) in Room 506, U. S. Post Office, Broadway and Glisan Streets, Portland, Oregon.

(B) As provided in Rule 30 (18 CFR 1.30) of the Commission's rules of practice and procedure, the officer hereafter designated to preside at the hearing shall certify the record of the hearing, including his report thereon, to the Commission for its decision and the presiding officer's report shall constitute a recommended decision.

Date of issuance: May 1, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5217; Filed, May 4, 1951;
8:48 a. m.]

TEXAS GAS TRANSMISSION CORP. AND
LOUISVILLE GAS AND ELECTRIC CO.

ORDER CONSOLIDATING PROCEEDINGS AND
FIXING DATE OF HEARING

In the matters of Texas Gas Transmission Corporation, Docket Nos. G-1570, G-1578, and G-1657; Louisville Gas and Electric Company, Docket No. G-1672.

On December 26, 1950, Texas Gas Transmission Corporation (Texas Gas), a Delaware corporation having its principal place of business at Owensboro, Kentucky, filed an application at Docket No. G-1570, for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act, as amended, authorizing the construction and operation of a new compressor station to be located on Texas Gas' existing 20-inch main natural-gas transmission pipe line extending from the Carthage Field in Texas to the Lisbon Field in Louisiana, as described in the application, and the supplement thereto filed on March 12, 1951, and the notice thereof published in the FEDERAL REGISTER ON January 20, 1951 (16 F. R. 555).

On January 3, 1951, Texas Gas filed an application at Docket No. G-1578 for a certificate of public convenience and

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necessity authorizing the construction and operation, among other things, of a main pipe line extension of about 189 miles, approximately 425 miles of 26-inch main line loops, and 14,620 horsepower of additional compressor capacity as described in the application, and the amendment thereto filed on March 12, 1951, and the notice thereof published in the **FEDERAL REGISTER** on January 18, 1951 (16 F. R. 477).

Texas Gas, on April 6, 1951, filed an application at Docket No. G-1657 for a certificate of public convenience and necessity authorizing the construction and operation of a metering and regulating station for the direct sale of natural gas on an interruptible basis to a new plant of the Mathieson Hydrocarbon Chemical Corporation located at Brandenburg, Kentucky, as described in the application, and the notice thereof published in the **FEDERAL REGISTER**.

On April 18, 1951, Louisville Gas and Electric Company, a Kentucky corporation with its principal place of business at Louisville, Kentucky, filed an application at Docket No. G-1672, pursuant to section 7 (b) of the Natural Gas Act, for permission and approval to abandon its present natural-gas service to the Indiana Gas & Water Company for resale in the communities of New Albany, Jeffersonville, Clarksville, and Claysburg, all in Indiana, as described in the application, and the notice thereof published in the **FEDERAL REGISTER**.

At Docket No. G-1578, Texas Gas requests, among other things, that it be authorized to construct and operate a lateral pipeline for the sale of natural gas to Indiana Gas & Water Company for resale in New Albany and Jeffersonville, Indiana. These are two of the communities presently served by Indiana Gas & Water Company with natural gas purchased from Louisville Gas and Electric Company, which service is proposed to be abandoned by the latter company according to its application at Docket No. G-1672.

The Commission finds: Orderly procedure requires that the above-mentioned applications filed in Docket Nos. G-1570, G-1578, G-1657, and G-1672 be consolidated for purposes of hearing.

The Commission orders:

(A) The said applications at Docket Nos. G-1570, G-1578, G-1657, and G-1672 be and they are hereby consolidated for the purposes of hearing.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a public hearing be held commencing on May 21, 1951, at 10:00 a. m. e. d. s. t., in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue NW, Washington, D. C., concerning the matters involved and the issues presented by the applications at Docket Nos. G-1570, G-1578, G-1657, and G-1672.

(C) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of

the Commission's rules of practice and procedure.

Date of issuance: May 1, 1951.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 51-5232; Filed, May 4, 1951;
8:52 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 54-191, 59-66, 54-173]

STANDARD GAS AND ELECTRIC CO. ET AL.

ORDER SEPARATING PROCEEDINGS, DENYING APPLICATION TO BE MADE PARTIES, AND DENYING MOTION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 30th day of April 1951.

In the matter of Standard Gas and Electric Company and Philadelphia Company, File No. 54-191; Standard Gas and Electric Company, File No. 59-66; Philadelphia Company and Standard Gas and Electric Company, File No. 54-173.

The Commission, by order dated March 1, 1951 (Holding Company Act Release No. 10413), having, inter alia, consolidated for the purpose of hearing certain matters (File Nos. 54-173, 54-191 and 59-66) involving proceedings under section II of the Public Utility Holding Company Act of 1935 ("act") concerning Standard Gas and Electric Company and its subsidiary, Philadelphia Company, both registered holding companies under the act; and the Commission having reserved the right to separate such consolidated proceedings; and

An application having been filed by Thomas Kilpatrick, Josef Auerbach and Max Wilk requesting that they be admitted as parties in such proceedings; and

The Hearing Officer designated to preside at the hearing in such consolidated proceedings having certified to the Commission a motion on behalf of a Protective Committee for Philadelphia Company 6 percent Cumulative Preferred Stock to reopen the record in File No. 54-173 for the purpose of receiving additional expert testimony with respect to the investment values of the Philadelphia Company 6 percent Cumulative Preferred Stock and the 4 percent Preferred Stock of Duquesne Light Company; and

Hearings having been held in such consolidated proceedings pursuant to the aforesaid order dated March 1, 1951, and the Hearing Officer having granted the motion of the applicant, Standard Gas and Electric Company, to close the record in File No. 54-173; and

The Commission deeming it appropriate in the public interest and in the interest of investors and consumers and conducive to the orderly and economical disposition of the matters involved in such consolidated proceeding to separate for further disposition the proceedings

in Files Nos. 54-191 and 59-66 from the proceedings in File No. 54-173; and

The Commission having considered the aforesaid application of Thomas Kilpatrick, Josef Auerbach and Max Wilk and the statement set forth thereunder as Exhibit A and having determined that the granting of such application is not required in the public interest and having further determined that leave to be heard pursuant to Rule XVII of the Commission's rules of practice heretofore granted to such applicants by the Hearing Officer is adequate for the protection of the interests of such applicants, and deeming it appropriate in the public interest and in the interest of investors and consumers that such application to be made parties herein should be denied; and

The Commission having considered the motion on behalf of the aforesaid Protective Committee in the light of the entire record and having determined that it would not be appropriate in the public interest or in the interest of investors and consumers again to reopen the record in the proceedings in File No. 54-173 for the purpose of taking additional expert testimony on investment values as requested in such motion:

It is therefore ordered, That the proceedings in File No. 54-173, be, and the same hereby are, separated from the proceedings in File Nos. 54-191 and 59-66.

It is further ordered, That the application of Thomas Kilpatrick, Josef Auerbach and Max Wilk to be made parties herein be, and the same hereby is, denied.

It is further ordered, That the notice on behalf of the Protective Committee for Philadelphia Company 6 percent Cumulative Preferred Stock to reopen the record in File No. 54-173 for the purpose of receiving additional expert testimony with respect to investment values, be, and the same hereby is, denied.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 51-5219; Filed, May 4, 1951;
8:48 a. m.]

[File No. 60-21]

ELLIS L. PHILLIPS ET AL.

ORDER TERMINATING PROCEEDING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 30th day of April A. D. 1951.

In the matter of Ellis L. Phillips, Empire Power Corporation, Eastern Seaboard Securities Corporation, Lauridel Corporation, Delaware Olmsted Company, jointly and severally, respondents; File No. 60-21.

The Commission having, by orders dated November 2, 1944, and December 9, 1944, pursuant to section 2 (a) (7) (B) of the Public Utility Holding Company Act of 1935 ("act"), instituted a proceeding to determine whether Ellis L. Phillips, Empire Power Corporation, Eastern Seaboard Securities Corpora-

tion, Lauridel Corporation, and Delaware Olmsted Company, or any one or more of them, directly or indirectly exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of Long Island Lighting Company and its subsidiary companies as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that said persons, or any one or more of them, be subject to the obligations, duties and liabilities imposed in said act upon holding companies; and

It appearing that since the institution of such proceeding Empire Power Corporation and Lauridel Corporation have been dissolved, and that Ellis L. Phillips has ceased to be an officer or director of Long Island Lighting Company; and

It further appearing that since the institution of said proceeding a plan of consolidation of Long Island Lighting Company and its subsidiary companies, Queens Borough Gas and Electric Company and Nassau & Suffolk Lighting Company, and the recapitalization of the resultant consolidated corporation, which is called Long Island Lighting Company ("Consolidated Corporation"), has been consummated pursuant to the provisions of section 11 (e) of the act; and

It further appearing that pursuant to such plan 3,149,696.6 shares of common (voting) stock of the Consolidated Corporation have been issued and that the respondents named above, together with the members of their families and the officers of their personal holding companies and trusts hold 18,853 (% of 1 percent) of such stocks; and

It further appearing that pursuant to the provisions of said section 11 (e) plan, a special election of the initial board of directors of the Consolidated Corporation was held on January 31, 1951, and that the respondents named above, together with the members of their families and the officers of their personal holding companies and trusts, cast less than % of 1 percent of the shares voted at said meeting, and that none of such persons are directors of the Consolidated Corporation; and

It further appearing that the respondents do not, directly or indirectly (either alone or pursuant to an arrangement or understanding with one or more other persons), exercise any controlling influence over the management or policies of the Consolidated Corporation; and

It appearing to the Commission that it is appropriate in the public interest and the interest of investors and consumers that this proceeding be dismissed;

It is hereby ordered, That this proceeding be, and hereby is, dismissed.

By the Commission.

[SEAL]

ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 51-5223; Filed, May 4, 1951;
8:50 a. m.]

No. 88—25

[File No. 70-2600]

NATIONAL FUEL GAS CO. ET AL.

ORDER GRANTING APPLICATION AND PERMITTING DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 30th day of April A. D. 1951.

In the matter of National Fuel Gas Company, United Natural Gas Company, Iroquois Gas Corporation, Pennsylvania Gas Company; File No. 70-2600.

National Fuel Gas Company ("National"), a registered holding company and its gas utility subsidiaries, United Natural Gas Company ("United"), Iroquois Gas Corporation ("Iroquois"), and Pennsylvania Gas Company ("Pennsylvania"), having filed with the Commission a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935 (the "act"), particularly sections 6, 7, 9 (a), 10, and 12 (f) of the act and Rule U-43 of the rules and regulations promulgated thereunder, with respect to the following proposed transactions:

National proposes the issuance and sale to The Chase National Bank of the City of New York, from time to time prior to December 31, 1951, of its promissory notes in the aggregate amount not to exceed \$11,000,000, pursuant to a Credit Agreement entered into between National and the said Bank. National agrees to issue and sell \$6,300,000 of such notes within ten days of receiving the order of this Commission permitting the transactions herein proposed, and on the date of such sale to apply said \$6,300,000 to the repayment without premium of the promissory notes of National presently outstanding in the same aggregate amount and held by The Chase National Bank. National further agrees to issue and sell an additional \$2,000,000 of such notes prior to July 1, 1951. All notes will be payable on or before July 1, 1952, with interest at the rate of 2½ percent per annum. National will apply the proceeds from the sale of the notes, other than the \$6,300,000 previously mentioned, together with treasury funds, to purchase (a) installment promissory notes of Iroquois in an aggregate amount not to exceed \$2,000,000; (b) installment promissory notes of Pennsylvania in an aggregate amount not to exceed \$2,000,000; and (c) installment promissory notes of United in an aggregate sum not to exceed \$1,000,000.

Iroquois has entered into a Credit Agreement with National, providing that Iroquois shall issue and sell to National from time to time during 1951 a series of installment promissory notes, each in the principal amount of \$100,000, with the aggregate principal amount not to exceed \$2,000,000. Such notes will be unsecured. The first note of the series will mature on June 1, 1953, and each succeeding note in the series will mature on June 1 of the calendar year following the maturity date of the next prior note in the series. Each note will bear interest at the rate of 3 percent per annum. Iroquois will have the option to prepay any of said notes at any time, or from

time to time, in whole or in part, without premium.

Pennsylvania has entered into a Credit Agreement with National, providing that Pennsylvania will issue and sell to National from time to time during 1951 a series of installment promissory notes, each in the principal amount of \$125,000, with the aggregate principal amount not to exceed \$2,000,000. Such notes will be unsecured. The first note of the series will mature on June 1, 1959, and each succeeding note in the series will mature on June 1 of the calendar year following the maturity date of the next prior note in the series. Each note will bear interest at the rate of 3 percent per annum. Pennsylvania will have the option to prepay any of said notes at any time, or from time to time, in whole or in part, without premium.

United has entered into a Credit Agreement with National, providing that United will issue and sell to National from time to time during 1951 a series of installment promissory notes, each in the principal amount of \$100,000, with the aggregate principal amount not to exceed \$1,000,000. Such notes will be unsecured. The first note of the series will mature on June 1, 1953, and each succeeding note in the series will mature on June 1 of the calendar year following the maturity date of the next prior note commencing with 1953 until the entire series is paid. Each note will bear interest at 3 percent per annum. United will have the option to prepay any of said notes at any time, or from time to time, in whole or in part, without premium.

Iroquois, Pennsylvania and United propose to use the proceeds from the sale of such notes, together with certain funds becoming available from current operations, to make additions to their utility plants in 1951, and to provide additional working funds to purchase additional gas for underground storage.

The Pennsylvania Public Utility Commission having authorized the proposed issuance and sale of the promissory notes by Pennsylvania and United and the Public Service Commission of the State of New York having authorized the proposed issuance and sale of the promissory notes by Iroquois; and

National having represented its intention to finance the payment of any bank loans, outstanding after the present period of large construction needs is over, through the issuance and sale of common stock or long term debenture bonds, when and if conditions are favorable; and

Said joint application-declaration having been filed on March 27, 1951, notice of said filing having been given in the form and manner required by Rule U-23 promulgated pursuant to said act, the Commission not having received a request for a hearing within the time specified in said notice, or otherwise, and the Commission not having ordered a hearing thereon; and

The Commission observing that National has indicated its intention to finance the payment of any bank loans outstanding after the present period of large construction needs is over through the issuance and sale of common stock

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and/or long term debenture bonds, when and if conditions are favorable; the Commission finding that the proposed transactions have the tendency required by section 10 of the act and observing no basis for adverse findings, and having determined that it is not necessary to impose any terms or conditions other than those prescribed by Rule U-24; and the Commission deeming it appropriate in the public interest and for the protection of investors and consumers to grant the request of the joint applicants-declarants that our order authorizing the proposed transactions become effective upon issuance;

It is ordered. Pursuant to Rule U-23 and the applicable sections of the act, and subject to the terms and conditions contained in Rule U-24, that the said joint applications-declarations be, and the same hereby are, granted and permitted to become effective forthwith.

By the Commission.

[SEAL] ORVAL L. DUBois,
Secretary.

[F. R. Doc. 51-5220; Filed, May 4, 1951;
8:49 a. m.]

[File No. 70-2614]

ALLENTOWN-BETHLEHEM GAS CO.

NOTICE OF FILING AND ORDER FOR HEARING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 30th day of April A. D. 1951.

Notice is hereby given that an application has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by Allentown-Bethlehem Gas Company ("Allentown"), a gas utility subsidiary of The United Gas Improvement Company, a registered holding company. Applicant has designated section 6 (b) of the act and Rule U-50 promulgated thereunder as applicable to the proposed transaction.

All interested persons are referred to said application which is on file in the offices of this Commission for a statement of the transaction therein proposed, which is summarized as follows:

Allentown proposes to issue and sell for \$1,500,000 in cash, \$1,500,000 principal amount of its First Mortgage Bonds, _____ percent series due 1976. Such bonds are to be issued under and secured by the First Mortgage dated April 1, 1924 of Allentown to Fidelity Trust Company, Trustee (under which Fidelity-Philadelphia Trust Company is successor trustee) and the various indentures supplemental thereto, including specifically a supplemental indenture to be dated as of June 1, 1951, to be entered into between Allentown and said Trustee.

The proceeds from the sale of such bonds will be used by Allentown to repay short term bank loans, presently totaling \$470,000; to repay the balance of certain advances made by The United Gas Improvement Company, presently totaling \$595,000; and to apply toward Allentown's 1951 construction program estimated to cost in the aggregate \$1,238,770.

Allentown's presently outstanding bonded indebtedness amounts to \$3,744,-

000, of which \$2,259,000 principal amount of 3 3/4 percent series bonds due 1965 (interest rate reduced to 3 percent by agreement of bondholders effective March 1, 1947) is held by two savings banks, a university, and four insurance companies, and \$1,485,000 principal amount of 3 3/4 percent series bonds due 1968 is held in equal amounts by two insurance companies.

Allentown, for reasons set forth in the application, requests the Commission to except the proposed issuance and sale from the competitive bidding requirements of Rule U-50.

Allentown states that the proposed transaction is subject to the jurisdiction of the Pennsylvania Public Utility Commission and that approval of that body will be filed herein by amendment.

It appearing to the Commission that it is appropriate in the public interest and in the interest of investors and consumers that a hearing be held with respect to the matters set forth in said application and that said application should not be granted or permitted to become effective except pursuant to further order of this Commission:

It is ordered. That a hearing on said application, pursuant to the applicable provisions of the act and the rules and regulations thereunder, be held on May 15, 1951 at 2:00 p. m., at the office of this Commission, 425 Second Street NW, Washington 25, D. C. On such date, the hearing room clerk will advise as to the room in which such hearing will be held. Any person desiring to be heard or otherwise wishing to participate in these proceedings shall file with the Secretary of this Commission, on or before May 14, 1951, a written request relative thereto as provided in Rule XVII of the Commission's rules of practice.

It is further ordered. That William W. Swift or any other officer or officers of this Commission designated by it for that purpose, shall preside at such hearing. The officer so designated to preside at such hearing is hereby authorized to exercise all powers granted to the Commission under section 18 (c) of the act and to a hearing officer under the Commission's rules of practice.

The Division of Public Utilities of the Commission having advised the Commission that it has made a preliminary examination of the said application, and that, on the basis thereof, the following matters and questions are presented for consideration without prejudice, however, to the presentation of additional matters and questions upon further examination:

(1) Whether it is appropriate in the public interest or for the protection of investors or consumers that the proposed issue and sale of bonds be excepted from the competitive bidding requirements of Rule U-50;

(2) Generally, whether the proposed transactions are in all respects in the public interest and in the interest of investors and consumers and consistent with all the applicable requirements of the act and the rules and regulations thereunder, and, if not, what modifications or terms or conditions should be required, or imposed, to meet such requirements.

It is further ordered. That the Secretary of the Commission shall serve a copy of this notice and order by registered mail on Allentown, The United Gas Improvement Company, and the Public Utility Commission of the Commonwealth of Pennsylvania, and that notice be given to all other persons by publication of a copy of this notice and order in the FEDERAL REGISTER and by a general release of the Commission distributed to the press and mailed to the mailing list for releases under the Public Utility Holding Company Act of 1935.

By the Commission.

[SEAL] ORVAL L. DUBois,
Secretary.

[F. R. Doc. 51-5222; Filed, May 4, 1951;
8:50 a. m.]

[File No. 70-2619]

COLUMBIA GAS SYSTEM, INC., ET AL.

NOTICE REGARDING FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 30th day of April A. D. 1951.

In the matter of Columbia Gas System, Inc., Atlantic Seaboard Corporation, Amere Gas Utilities Company, Virginia Gas distribution Corporation, Virginia Gas Transmission Corporation; File No. 70-2619.

Notice is hereby given that a joint application-declaration has been filed with this Commission, pursuant to the Public Utility Holding Company Act of 1935, by the Columbia Gas System, Inc. ("Columbia"), a registered holding company, its subsidiary, Atlantic Seaboard Corporation ("Seaboard"), also a registered holding company, and Amere Gas Utilities Company ("Amere"), Virginia Gas Distribution Corporation ("Distribution"), and Virginia Gas Transmission Corporation ("Transmission"), subsidiaries of Seaboard. Applicants-declarants have designated sections 6 (b), 7, 9, 10, and 12 of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than May 14, 1951, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law raised by said application-declaration proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW, Washington 25, D. C. At any time after May 14, 1951 said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said joint application-declaration which is on file in the office of this Commission for a statement of the transactions

therein proposed, which are summarized as follows:

Seaboard proposes to issue and sell and Columbia proposes to purchase, at par, 122,000 shares of Seaboard's \$25 par value common stock. Of the \$3,050,000 of proceeds to be realized therefrom, Seaboard will use \$1,525,000 to complete its 1951 construction program and will use the balance of \$1,525,000 to purchase at par 13,200 shares of Amere's \$25 par value common stock and \$795,000 principal amount of Amere's 3 1/4 percent installment promissory notes; \$125,000 principal amount of Distribution's 3 1/4 percent notes; and 11,000 shares of Transmission's \$25 par value common stock. The notes to be issued by Amere and Distribution are to be paid in equal annual installments on February 15th of each of the years 1953 to 1977, inclusive. The proceeds of \$1,125,000 to be realized by Amere of \$125,000 by Distribution and of \$275,000 by Transmission from the sales of said securities to Seaboard will be used to finance their 1951 construction program.

The joint application-declaration states that the issue and sale of the proposed common stock and notes of Amere are subject to the jurisdiction of the Public Service Commission of West Virginia, and that the issue and sale of notes by Distribution and of common stock by Transmission are subject to the jurisdiction of the State Corporation Commission of Virginia. According to the filing, the orders of said Commissions approving the proposed issue and sale of securities will be supplied by amendment to the instant application-declaration upon issuance of such orders.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 51-5221; Filed, May 4, 1951;
8:49 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. I, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 17690]

SEIICHI YAMAMOTO AND YOICHIRO OTA

In re: Debts owing to Seiichi Yamamoto and Yoichiro Ota. D-39-600-E-1, F-39-6692-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Seiichi Yamamoto and Yoichiro Ota, each of whose last known address is Japan, are residents of Japan and nationals of a designated enemy country (Japan);

2. That the property described as follows: That certain debt or other obligation of the Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in New York

of the Sumitomo Bank, Ltd., 80 Spring Street, New York 12, New York, arising out of an accepted account payable for the unused face amount of Letter of Credit No. HS-10, issued in favor of Seiichi Yamamoto by the Sumitomo Bank of Hawaii on or about May 19, 1941, and which accepted account payable is in the name of Sumitomo Bank of Hawaii and/or holders or owners of drafts as their interests may appear, and any and all rights to demand, enforce and collect the aforesaid debt or other obligation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Seiichi Yamamoto, the aforesaid national of a designated enemy country (Japan);

3. That the property described as follows: That certain debt or other obligation of the Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in New York of the Sumitomo Bank, Ltd., 80 Spring Street, New York 12, New York, arising out of an accepted account payable for the unused face amount of Letter of Credit No. HS-11, issued in favor of Yoichiro Ota by the Sumitomo Bank of Hawaii on or about June 9, 1941 and which accepted account payable is in the name of Sumitomo Bank of Hawaii and/or holders or owners of drafts as their interests may appear, and any and all rights to demand, enforce and collect the aforesaid debt or other obligation,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Yoichiro Ota, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5236; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17692]

DEN DANSKE LANDMANDSBANK HYPOTH- EKOG VEKSELBANK, A. S.

In re: Accounts maintained in the name of Den Danske Landmandsbank Hypothek-og Vekselsbank A. S., Copenhagen, Denmark, and owned by persons whose names are unknown. F-19-315.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or other-

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wise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Den Danske Landmandsbank Hypothek-og Vekselbank A. S., Copenhagen, Denmark]

Column I	Column II
Name and address of institution which maintains account	Designation of account
1. Irving Trust Co., 1 Wall St., New York 15, N. Y.	Demand deposit account, as described by the Irving Trust Co. in its report on Form OAP-700, bearing its Serial No. 0008.
2. The Chase National Bank of the City of New York, 18 Pine St., New York, N. Y.	Bank deposit Den Danske Landmandsbank Hypothek-og Vekselbank A. S. old a/c Copenhagen, Denmark, as described by The Chase National Bank of the City of New York, in its report on Form OAP-700, bearing its Serial No. 70.

[F. R. Doc. 51-5237; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17695]

L. REIN & CO.

In re: Accounts maintained in the name of L. Rein & Company, Amsterdam, Holland, and owned by persons whose names are unknown. F-49-1242.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts, excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States

with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of L. Rein & Company, Amsterdam, Holland]

Column I	Column II
Name and address of institution which maintains account	Designation of account
Shields & Co., 44 Wall St., New York, N. Y.	(a) Cash, and (b) securities; as described by Shields & Co. in its report on Form OAP-700, dated Nov. 15, 1950.

[F. R. Doc. 51-5238; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17696]

JOHANN WEHRLI & CIE, A. G.

In re: Accounts maintained in the name of Johann Wehrli & Cie, A. G., Zurich, Switzerland, and owned by

persons whose names are unknown. F-63-863-A-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have

the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Johann Wehrli & Cie, A. G., Zurich, Switzerland]

Column I	Column II
Name and address of institution which maintains account	Designation of account
Guaranty Trust Co., of New York, 140 Broadway, New York 15, N.Y.	(a) Johann Wehrli & Cie, A. G., general ruling No. 6 account, Lowenstrasse 19, Zurich 1, Switzerland, as described by Guaranty Trust Co. of New York in its report on Form OAP-700, bearing its Serial No. FB 166; (b) miscellaneous portfolio of stocks and bonds a/c FC-9523, and (c) \$1,500 conversion office for German foreign debts 3% dollar bonds due Jan. 1, 1946, with July 1, 1941, and S. C. A.; as described by Guaranty Trust Co. of New York in its report on Form OAP-700, bearing its Serial No. CU 0066.

[F. R. Doc. 51-5239; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17698]

SOCIEDAD COMMERCIAL DEL PLATA, S. A.

In re: Accounts maintained in the name of Sociedad Commercial del Plata, S. A., Buenos Aires, Argentina, and owned by persons whose names are unknown. F-63-13053.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts, excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States

with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Sociedad Commercial del Plata, S. A., Buenos Aires, Argentina]

Column I	Column II
Name and address of institution which maintains account	Designation of account
Central Hanover Bank & Trust Co., 70 Broadway, New York, N.Y.	Sociedad Commercial del Plata, Buenos Aires, Argentina, as described by the Central Hanover Bank & Trust Co. in its report on Form OAP-700, bearing its Serial No. 4.

[F. R. Doc. 51-5240; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17699]

HAMBROS BANK LTD.

In re: Accounts maintained in the name of Hambros Bank Limited, Lon-

don, England, and owned by persons whose names are unknown. F-27-10849.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts, excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States, excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall

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have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Hambros Bank Limited, London, England]

Column I	Column II
Name and address of institution which maintains account	Designation of account
The New York Trust Co., 100 Broadway, New York, N. Y.	(a) Bank deposit, and (b) miscellaneous portfolio of stocks, bonds; as described by The New York Trust Co. in its report on Form OAP-700 bearing its Serial No. FD 16.

[F. R. Doc. 51-5241; Filed, May 4, 1951;
8:54 a. m.]

[Vesting Order 17700]

PICTET & CIE

In re: Accounts maintained in the name of Pictet & Cie, Geneva, Switzerland, and owned by persons whose names are unknown. F-63-5686.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing

to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Pictet & Cie, Geneva, Switzerland]

Column I	Column II
Name and address of institution which maintains account	Designation of Account
J. P. Morgan & Co., Inc., 23 Wall St., New York, N. Y.	(a) Pictet & Cie., regular a/c, (S-2119), and (b) Pictet & Cie., regular a/c, G. R. No. 6 a/c, (C-2605); as described by J. P. Morgan & Co., Inc., in its report on Form OAP-700, bearing its Serial No. 34.

[F. R. Doc. 51-5242; Filed, May 4, 1951;
8:55 a. m.]

[Vesting Order 17701]

AMSTERDAMSCHÉ EFFECTEN & COMMISSIE-BANK N. V.

In re: Accounts maintained in the name of Amsterdamsche Effecten & Commissiebank N. V., Amsterdam, Holland, and owned by persons whose names are unknown. F-49-1343.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended,

and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Amsterdamsche Effecten & Commissiebank N. V., Amsterdam, Holland]

Column I	Column II
Name and address of institution which maintains account	Designation of account
H. Hentz & Co., 60 Beaver St., New York 4, N. Y.	(a) Credit balance, and (b) miscellaneous portfolio of stocks; as described by H. Hentz & Co. in its report on Form OAP-700, bearing its Serial No. 1.

[F. R. Doc. 51-5243; Filed, May 4, 1951;
8:55 a. m.]

[Vesting Order 17703]

HENTZ & CIE

In re: Accounts maintained in the name of Hentsch & Cie, Geneva, Switzerland, and owned by persons whose names are unknown. F-63-4293.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Hentsch & Cie., Geneva, Switzerland]

Column I	Column II
Name and address of institution which maintains account	Designation of account
Dominick & Dominick, 14 Wall St., New York 6, N. Y.	(a) Hentsch & Cie., Geneva, and (b) Hentsch & Cie., Geneva, general ruling No. 6 a/c; as described by Dominick & Dominick in its report on Form OAP-700, bearing its Serial No. 19; (c) Hentsch & Cie., Geneva, and (d) Hentsch & Cie., Geneva, general ruling No. 6 a/c; as described by Dominick & Dominick in its report on Form OAP-700, bearing its Serial No. 20.

[F. R. Doc. 51-5244; Filed, May 4, 1951;
8:55 a. m.]

[Vesting Order 17704]

AMSTERDAMSCHE BANK, N. V.

In re: Accounts maintained in the name of Amsterdamsche Bank, N. V., The Hague, The Netherlands, and owned by persons whose names are unknown. F-49-822 (The Hague),

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended,

NOTICES

and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

[Accounts maintained in the name of Amsterdamsche Bank N. V., The Hague, The Netherlands]

Column I	Column II
Name and address of institution which maintains account	Designation of account
Brown Bros. Harriman & Co., 59 Wall St., New York 5, N. Y.	(a) Amsterdamsche Bank N. V., The Hague, residents Netherlands blocked account, and (b) Amsterdamsche Bank N. V., The Hague, nonresidents Netherlands blocked account; as described by Brown Bros. Harriman & Co., New York, N. Y., in its report on FORM OAP-700, bearing its Serial No. 3.

[F. R. Doc. 51-5245; Filed, May 4, 1951;
8:55 a. m.]

[Vesting Order 17750]

TOSHIHIKO ONO ET AL.

In re: Real and personal property, property insurance policies, postal savings account and bank account owned by Toshihiko Ono, also known as Toshikiko Ono and as Henry T. Ono, and others. D-39-9701, D-39-19240-E-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Toshihiko Ono, also known as Toshikiko Ono and as Henry T. Ono, Fumiko Ono and Mojirō Ono, each of whose last known address is Japan, are residents of Japan and nationals of a designated enemy country (Japan);

2. That the property described as follows:

a. Real property situated in the County of Clark, State of Washington, particularly described in Exhibit A, set forth below and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments, arising from the ownership of such property, and

b. All right, title, interest and claim of Toshihiko Ono, also known as Toshikiko Ono and as Henry T. Ono, and Fumiko Ono in and to all insurance policies covering the premises described in subparagraph 2-a hereof, and any and all extensions or renewals thereof,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Toshihiko Ono, also known as Toshikiko Ono and as Henry T. Ono, and Fumiko

Ono, the aforesaid nationals of a designated enemy country (Japan);

3. That the property described as follows: Personal property owned by the persons named in subparagraph 1 hereof, located within the premises described in Exhibit A, set forth below and by reference made a part hereof, which said personal property is particularly described in Exhibit B, set forth below and by reference made a part hereof,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the persons named in subparagraph 1 hereof, the aforesaid nationals of a designated enemy country (Japan);

4. That the property described as follows: That certain debt or other obligation arising out of a postal savings account, account number 11285, maintained in the name of Mojirō Ono, with the United States Post Office at Vancouver, Washington, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Mojirō Ono, the aforesaid national of a designated enemy country (Japan);

5. That the property described as follows: That certain debt or other obligation of Vancouver Federal Savings and Loan Association, 1001 Main Street, Vancouver, Washington, arising out of an account, account number 2619, maintained at the aforesaid Association, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Toshihiko Ono, also known as Toshikiko Ono and as Henry T. Ono, the aforesaid national of a designated enemy country (Japan);

and it is hereby determined:

6. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Japan).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

There is hereby vested in the Attorney General of the United States the property described in subparagraphs 2-b, 3, 4 and 5 hereof.

All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Real property situated in Clark County, Washington, described as follows:

The East half of the following described real estate, to wit: Beginning at a point in the center of the County Road on the North boundary of the Philip Christ Donation Land Claim, said point being 60.56 chains West and 26.12 chains North, more or less, from the corner to Sections 20, 21, 28, and 29 in Township 2 North of Range 2 East of the Willamette Meridian, said point being also North 83° West 50.95 chains from the Northeast corner of said Donation Land Claim; running thence North 83° West 15.00 chains; thence South 1°40' West 42.96 chains, more or less, to intersection with the South line of said Donation Land Claim; thence East along said South line 13.75 chains, more or less, to the South West corner of Tract No. 8 of the subdivision of said Donation Land Claim; thence North 3°20' East along the West line of Tract No. 8 of said subdivision, 41.19 chains, more or less, to the place of beginning.

Subject to that easement shown in Book 137 at Page 24, Deed Records of aforesaid county.

EXHIBIT B

- 1 Piano.
- 1 Radio (RCA).
- 1 Washing machine.
- 1 Film projector.
- 2 Cameras.
- 1 Binocular.
- 1 Table and chairs.
- Porch settees.

[F. R. Doc. 51-5248; Filed, May 4, 1951;
8:56 a. m.]

[Vesting Order 17751]

EMMA STAHL ET AL.

In re: Mortgage owned by Emma Stahl and others. F-28-31395.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Emma Stahl, whose last known address is Germany, is a resident of Germany and a national of a designated enemy country (Germany);

2. That the personal representatives, heirs, next of kin, legatees and distributees of Carl Gottlob Stahl, deceased, who there is reasonable cause to believe are residents of Germany, are nationals of a designated enemy country (Germany);

3. That the property described as follows: A mortgage executed on June 26, 1934, by Hermann Neiheiser and Frida Neiheiser, his wife, as mortgagors to Carl Gottlob Stahl and Emma Stahl, his wife, as mortgagees, in the amount of \$3,-

500.00, with interest thereon at 6 percent per annum, and recorded in the Office of the County Clerk of Richmond County, State of New York, on July 10, 1934, in Liber 708 of Mortgages at page 312, and any and all obligations secured by said mortgage, including but not limited to all security rights in and to any and all collateral (including the aforesaid mortgage) for any and all such obligations, and the right to enforce and collect such obligations, and the right to possession of the aforesaid mortgage, and any and all notes, bonds and other instruments evidencing such obligations, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

4. That to the extent that the person named in subparagraph 1 hereof and the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5249; Filed, May 4, 1951;
8:56 a. m.]

[Vesting Order 17705]

AMSTERDAMSCHÉ BANK N. V.

In re: Accounts maintained in the name of Amsterdamsche Bank N. V., Amsterdam, The Netherlands, and owned by persons whose names are unknown. F-49-822 (Amsterdam).

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

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(a) Any other property, rights and interests which represent accumulations or accruals to, changes in form of, or substitutions for, any of the property, rights and interests in said identified accounts on October 2, 1950, and which are now held in other accounts being maintained as blocked or otherwise subject to the restrictions of Executive Order 8389, as amended, or regulations, rulings, orders or instructions issued thereunder, and

(b) Any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants) and any and all declared and unpaid dividends on any shares of stock in any of said accounts,

excepting from the foregoing, however, all lawful liens and setoffs of the respective institutions in the United States with whom the aforesaid accounts are maintained,

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Accounts maintained in the name of Amsterdamsche Bank N. V., Amsterdam, The Netherlands

Column I	Column II
Name and address of institution which maintains account	Designation of account
1. Brown Bros., Harriman & Co., 59 Wall St., New York 5 N. Y.	(a) Amsterdamsche Bank N. V., Amsterdam, ordinary account, Blocked Account, (b) Amsterdamsche Bank N. V., Amsterdam, number account, blocked account, (c) Amsterdamsche Bank N. V., Amsterdam, "F" account blocked account, and (d) Amsterdamsche Bank N. V., Amsterdam, Sub Dossier No. 1282, blocked account; as described by Brown Bros., Harriman & Co., in its report on Form OAP-700, bearing its Serial No. 1; (e) Amsterdamsche Bank N. V., Amsterdam, residents Netherlands, blocked account, (f) Amsterdamsche Bank N. V., Amsterdam, nonresidents, Netherlands, blocked account, (g) Amsterdamsche Bank N. V., Amsterdam, number account nonresidents Netherlands, blocked account, and (h) Amsterdamsche Bank N. V., Amsterdam, number account residents Netherlands, Blocked Account; as described by Brown Bros., Harriman & Co., in its report on Form OAP-700, bearing its Serial No. 2.
2. Bankers Trust Co., 16 Wall St., New York, N. Y.	Deposit account, as described by the Bankers Trust Co. in its report on Form OAP-700, bearing its Serial No. BK-2.
3. Guaranty Trust Co., of New York, 140 Broadway, New York, N. Y.	(a) Miscellaneous portfolio of stocks and bonds a/c XC-2697, and (b) 2M German Government 7 percent external loan of 1924 gold bonds due December 15, 1949, with Apr. 15, 1940, and S. C. A.; as described by the Guaranty Trust Co. of New York in its report on Form OAP-700, bearing its Serial No. CU0040.
4. The Chase National Bank of the City of New York, 18 Pine St., New York, N. Y.	Amsterdamsche Bank N. V. old account, Amsterdam, Netherlands, as described by The Chase National Bank of the City of New York, in its report on Form OAP-700, bearing its Serial No. 18.
5. The National City Bank of New York, 55 Wall St., New York 5, N. Y.	Current account, uncertified account, as described by the National City Bank of New York in its report on Form OAP-700, bearing its Serial No. 0115.

[F. R. Doc. 51-5249; Filed, May 4, 1951;
8:56 a. m.]

[Vesting Order 17706]

OVERSEAS TRADE AND FINANCE CORP.

In re: Accounts maintained in the name of Overseas Trade and Finance Corp. (organized in Panama), c/o Mr. Jean E. Donna, 66 Rue Stand, Geneva, Switzerland, and owned by persons whose names are unknown. F-63-13052.

Under the authority of the Trading With the Enemy Act, as amended, Executive Orders 9193, as amended, 9788 and 9989, and pursuant to law, after investigation, it is hereby found:

1. That the property described as follows: All property, rights and interests in the accounts identified in Exhibit A set forth below and by reference made a part hereof, together with

NOTICES

EXHIBIT A

[Accounts maintained in the name of Overseas Trade & Finance Corp. (organized in Panama), c/o Mr. Jean E. Donna,
66 Rue Stand, Geneva, Switzerland]

Column I	Column II	Column III
Name and address of institution which maintains account	Designation of account	Property, rights and interests in the account as of Oct. 2, 1950, excluded from this vesting order ¹
The Chase National Bank of the City of New York, 18 Pine St., New York, N. Y.	(a) Overseas Trade & Finance Corp., general ruling No. 6 account, as described by The Chase National Bank of the City of New York in its report on Form OAP-700 bearing its Serial No. 329, and (b) Overseas Trade & Finance Corp. (FS 84134), as described by The Chase National Bank of the City of New York in its report on Form OAP-700 bearing its Serial No. 281.	22134 blocked French francs which, according to the report on Form OAP-700 filed by The Chase National Bank of the City of New York and bearing its Serial No. 281, are held abroad for its account.

¹ Also excluded from this vesting order are (a) any accumulations or accruals to, changes in form of, or substitutions for, any such property, rights and interests, since Oct. 2, 1950, and (b) any and all rights in, to and under any securities (including, without limitation, bonds, coupons, mortgage participation certificates, shares of stock, scrip and warrants), and any and all declared and unpaid dividends on any shares of stock, listed in Column III or excluded under (a) of this footnote.

[F. R. Doc. 51-5247; Filed, May 4, 1951; 8:56 a. m.]

[Vesting Order 17752]

CARL TIEDEMANN

In re: Real property, property insurance policies and claim owned by Carl Tiedemann. D-28-12974.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Carl Tiedemann is a citizen of Germany who on or since the effective date of Executive Order 8389, as amended, and on or since December 11, 1941 was domiciled and resident in Germany, and is a national of a designated enemy country (Germany);

2. That the property described as follows:

a. Real property situated in the City of Jersey City, County of Hudson, State of New Jersey, particularly described in Exhibit A, set forth below and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments, arising from the ownership of such property,

b. All right, title, interest and claim of the person named in subparagraph 1 hereof in and to all insurance policies covering the premises described in subparagraph 2 hereof and any and all extensions or renewals thereof, and

c. That certain debt or other obligation owing to the person named in subparagraph 1 hereof by Hans Tiedemann, arising out of the net income by reason of the collection of rents from the real property described in subparagraph 2-a hereof, and any and all rights to demand, enforce and collect the same,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of, or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the person named in subparagraph 1 hereof is not within a designated enemy country, the national interest of the United States

requires that such person be treated as a national of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described in subparagraph 2-a hereof, subject to recorded liens, encumbrances and other rights of record held by or for persons who are not nationals of designated enemy countries, and

There is hereby vested in the Attorney General of the United States the property described in subparagraphs 2-b and 2-c hereof,

All such property so vested to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

All that certain tract or parcel of land and premises situate in the City of Jersey City, County of Hudson and State of New Jersey, being part of lots 112 and 113 in Block 2 on Map of property situated in Bergen Heights, filed in January 1864, by Charles N. Buck and being also known as 536½ Westside Ave., more particularly described as follows:

Beginning at a point in the easterly side of Westside Avenue, distant sixty-six and seventy-one hundredths (66.71) feet northerly from the northeasterly corner of Westside Avenue and Clendenny Avenue; thence running (1) easterly and parallel with Clendenny Avenue, to, through and beyond the center of a party wall standing partly on the premises hereby described and partly on the premises adjoining southerly thereto, ninety-seven and twenty hundredths (97.20) feet; thence running (2) northerly and parallel with Westside Avenue, sixteen and fifty

is property within the United States;

2. That the property described in subparagraph 1 hereof is owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or is evidence of ownership or control by persons, names unknown, who, if individuals, there is reasonable cause to believe are residents of a designated enemy country and which, if partnerships, associations, corporations, or other organizations, there is reasonable cause to believe are organized under the laws of a designated enemy country or on or since the effective date of Executive Order 8389, as amended, have had their principal places of business in a designated enemy country;

3. That the persons referred to in subparagraph 2 hereof are nationals of a designated enemy country;

and it is hereby determined:

4. That to the extent that the persons referred to in subparagraph 2 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country.

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended, and the term "designated enemy country" has reference to Germany or Japan.

Executed at Washington, D. C., on April 18, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

hundredths (16.50) feet; thence running (3) westerly and parallel with the first course, to, through and beyond the center of a party wall standing partly on the premises hereby described and partly on the premises adjoining northerly thereto, ninety-seven and twenty hundredths (97.20) feet to the easternly line of West Side Avenue; thence running (4) southerly along the same, sixteen and fifty hundredths (16.50) feet to the point or place of beginning.

[F. R. Doc. 51-5250; Filed, May 4, 1951; 8:56 a. m.]

[Vesting Order 12665, Amdt.]

JOSEPHINE WEBER MILLER ET AL.

In re: Interest in real property, property insurance policy and claims owned by Josephine Weber Miller, and others. F-28-23993-B-1.

Vesting Order 12665, dated January 12, 1949, is hereby amended as follows and not otherwise:

A. By deleting from said Vesting Order 12665, subparagraph 1 thereof, and substituting therefor the following:

1. That the persons whose names and last known addresses appear below are residents of Germany and nationals of a designated enemy country (Germany);

Name and Last Known Address

Rudolph Weber, Senior, Entengasse 2, Salmunster-Soden, Grosse Hessen, Germany. Josephine Weber Miller, Wallert, near Bad Soden, Germany.

Elizabeth Hilde Ruppel, also known as Elizabeth Ludwig, Bad Soden, Germany. Joseph Hilde, also known as Joseph Ludwig, Bad Soden, Germany.

Louise Noll, Bad Soden, Germany. Marie Kloberdanz, Bad Soden, Germany. Karl Kloberdanz, Bad Soden, Germany. Elsie Kloberdanz, Bad Soden, Germany. Louise Bingel, Frankfort am Main, Germany.

Joseph Kirchner, Bad Soden, Germany. Rosa Josephine Botsch, Bad Soden, Germany.

Heinrich Karl Kirchner, Bad Soden Germany.

Rudolph Johann Kirchner, Bad Soden, Germany.

Anna Josephine Yockel, Salmunster, Germany.

B. By deleting from said Vesting Order 12665, subparagraph 2-a thereof, and substituting therefor the following:

2. That the property described as follows:

a. An undivided thirteen twentieths (13/20ths) interest in real property situated in the Town of Irvington, County of Essex, State of New Jersey, particularly described in Exhibit A, set forth below and by reference made a part hereof, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments arising from the ownership of such property,

C. By deleting from said Vesting Order 12665, the last part of subparagraph 2 thereof, commencing with the words "is property within the United States" and ending with the words "the aforesaid nationals of a designated enemy country (Germany);" and substituting therefor the following:

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, Rudolph Weber, Senior, Josephine Weber Miller, Elizabeth Hilde Ruppel, also known as Elizabeth Ludwig, Joseph Hilde, also known as Joseph Ludwig, Louise Noll, Marie Kloberdanz, Karl Kloberdanz, Elsie Kloberdanz, Louise Bingel, Joseph Kirchner, Rosa Josephine Botsch, Heinrich Karl Kirchner, Rudolph Johann Kirchner, and Anna Josephine Yockel, the aforesaid nationals of a designated enemy country (Germany);

All other provisions of said Vesting Order 12665 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5251; Filed, May 4, 1951; 8:57 a. m.]

[Vesting Order 17129, Amdt.]

REBOLZ BANKIERSKANTOOR

In re: Securities and bank accounts owned by and debts owing to Rebholz Bankierskantoor, also known as Rebholz Effectenkantoor and as F. Leeser.

Vesting Order 17129, dated January 19, 1951, is hereby amended as follows and not otherwise:

1. By deleting from Exhibit B, set forth thereunder and made a part thereof, the Certificate No. 794087 set forth with respect to six (6) shares of common stock of United States Steel Corporation, and substituting therefor the Certificate No. J 794087.

All other provisions of said Vesting Order 17129 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on April 11, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5252; Filed, May 4, 1951; 8:57 a. m.]

[Vesting Order 17436, Amdt.]

OTTO G. JANSEN

In re: Real property owned by Otto G. Jansen. F-28-8903.

Vesting Order 17436, dated February 26, 1951, is hereby amended as follows and not otherwise:

By deleting subparagraph 2 from said Vesting Order 17436 and substituting therefore the following:

2. That the property described as follows: Real property situated in the County of Anne Arundel, State of Maryland, particularly described as Lot Twenty-six (26) Block Eleven (11), Lots Nineteen (19) and Twenty (20) Block Fourteen (14), Lots Two (2), Four (4), Five (5) and Six (6) Block Seventeen (17), all in Severn Grove, together with all hereditaments, fixtures, improvements and appurtenances thereto, and any and all claims for rents, refunds, benefits or other payments, arising from the ownership of such property,

is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid national of a designated enemy country (Germany);

All other provisions of said Vesting Order 17436 and all actions taken by or on behalf of the Attorney General of the United States in reliance thereon, pursuant thereto and under the authority thereof are hereby ratified and confirmed.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5253; Filed, May 4, 1951; 8:57 a. m.]

CHARLES NICOLLE

NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of publication hereof, the following property located in Washington, D. C., including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., and Property

Charles Nicolle, Paris, France; Claim No. 29501; property described in Vesting Order No. 293 (7 F. R. 9836, November 26, 1942) relating to Patent Application Serial No. 206,498 (now United States Letters Patent No. 2,358,246), Patent Application Serial No. 268,442 (now United States Letters Patent No. 2,363,014) and Patent Application Serial No. 293,601.

Executed at Washington, D. C., on April 30, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5185; Filed, May 3, 1951; 8:49 a. m.]

NOTICES

[Return Order 949]

FRANCESCO CASTELLI

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Francesco Castelli, a/k/a Frank Castell, Pieve del Cairo (Pavia), Italy; Claim No. 38456; October 13, 1950 (15 F. R. 6899); real property known as Nos. 830 and 832 Poplar St. and No. 199 North Dunlap St., situated in the City of Memphis, Shelby County, Tennessee, being lot number five (5) of the Holmes Subdivision; \$10,034.78 in the Treasury of the United States.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on May 1, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5254; Filed, May 4, 1951;
8:57 a. m.]

[Return Order 951]

ETABLISSEMENTS BOUDIOS

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, including all royalties accrued thereunder and all damages and profits recoverable for past infringement thereof, be returned after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Etablissements Boudios, Romilly-sur-Seine (Aube), France; Claim No. 42011; March 9, 1951 (16 F. R. 2206); property described in Vesting Order No. 666 (8 F. R. 5047, April 17, 1943) relating to United States Letters Patent No. 2,173,775. This return shall not be deemed to include the rights of any licensees under the above patent.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on May 1, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5256; Filed, May 4, 1951;
8:58 a. m.]

[Return Order 952]

MARION C. FAUSTEN

Having considered the claim set forth below and having issued a determination allowing the claim, which is incorporated by reference herein and filed herewith,

It is ordered, That the claimed property, described below and in the determination, be returned, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Notice of Intention To Return Published, and Property

Marion C. Fausten, Philadelphia, Pa.; Claim No. 13154; March 20, 1951 (16 F. R. 2556); \$6,504.61 cash in the Treasury of the United States. The right, title and interest of Marion C. Fausten in and to the Trust created under the Will of Jane E. Triebels, deceased; trust terminated in 1946. The right, title and interest of Marion C. Fausten in and to a Trust created under the Will of Walther Fausten, deceased, National Bank of Germantown & Trust Company, Philadelphia, Pennsylvania, Trustee.

Appropriate documents and papers effectuating this order will issue.

Executed at Washington, D. C., on May 1, 1951.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 51-5255; Filed, May 4, 1951;
8:58 a. m.]